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Current's
**BAIL AND ACQUITTAL
JUDGEMENTS**
(Supreme Court and Bombay High Court)

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strengthened after acquittal - No compelling reason to interfere with acquittal - Acquittal confirmed - Appeal Dismissed [*Raj Pal Singh vs. Rajveer & Ors* (SUPREME COURT OF INDIA) 2026(1)MBAJ1]

MURDER CONVICTION

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MURDER DURING ROBBERY

Murder During Robbery - Appeal challenged conviction under Sec. 302 IPC for murder of elderly man during house burglary - Prosecution relied on sole identification by injured witness and recovery of weapon and articles - Appellant contended witness suffered weak eyesight, identification made after long delay and recoveries uncorroborated - Courts below accepted identification as credible and upheld conviction - On scrutiny it found discrepancies and contradictions in evidence of witness, absence of independent corroboration of recovery, non-matching of blood stains, and lack of proof connecting articles to offence - Failure to join independent witnesses and doubtful recovery rendered prosecution story unsafe - Conviction based solely on infirm evidence could not be sustained - Benefit of doubt extended - Appellant acquitted - Appeal Allowed [*Raj Kumar @ Bheema vs. State of Nct of Delhi* (SUPREME COURT OF INDIA) 2026(1)MBAJ72]

BAIL AND ACQUITTAL JUDGEMENTS

2026(1)MBAJ1

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

(Hon'ble Judge: K Vinod Chandran; N V Anjaria)

Criminal Appeal No 809 of 2014 **dated 16/12/2025**

Raj Pal Singh

Versus

Rajveer & Ors

MURDER ACQUITTAL

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 307 - Code of Criminal Procedure, 1973 Sec. 313 - Murder Acquittal - Complainant appealed against acquittal of accused in murder of his son - Trial court convicted respondents under Section 302 read with Section 34 IPC - High Court reversed conviction - Appellant challenged acquittal - Evidence showed inconsistencies in witnesses' accounts regarding weapons, sequence of events, and medical proof - High Court observed improbability of dragging deceased by aged and ill accused - Recovery of weapon not corroborated by ballistic evidence - Delay and contradictions in complaint noticed - Apex Court held High Court's appreciation of evidence reasonable and based on material discrepancies - Presumption of innocence strengthened after acquittal - No compelling reason to interfere with acquittal - Acquittal confirmed - Appeal Dismissed

Law Point: Interference with acquittal requires strong and cogent reasons as presumption of innocence stands reinforced; appellate court should not substitute its view unless trial findings are manifestly perverse

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 307

Code of Criminal Procedure, 1973 Sec. 313

Counsel:

Nagendra Singh, Mukesh Kumar, Srikant Singh, Abhijit Singh, Rajinder Pal Singh, Akash, Vishwa Pal Singh, Yadav Narendra Singh, Abhishth Kumar

JUDGEMENT

N.V. Anjaria, J.- [1] The appellant is the original complainant who by preferring this appeal, seeks to call in question judgment and order dated 10.10.2012 of the High Court of Allahabad in Criminal Appeal No.8119 of 2007, whereby the High Court set

aside the judgment and order of conviction dated 23.11.2007 passed by the Court of learned Additional District Judge, Ghaziabad in Sessions Trial Case No.291 of 1997 against the Respondent Nos. 1 to 3 herein for the offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 and sentencing them to life imprisonment with imposition of fine of Rs.1,50,000/- each and in default to undergo further imprisonment for two years.

[2] As the High Court acquitted the respondent Nos.1 to 3, the appellant-complainant is aggrieved.

[3] The appellant-complainant happens to be the father of one Praveen Kumar serving as a captain in the Indian Army, when Praveen was allegedly murdered by the Respondent Nos. 1 to 3. The prosecution story runs to state inter alia that one Major Adjutant Akash Johar wrote a letter on 31.05.1996 to the District Magistrate, Ghaziabad mentioning about the hardships faced by the appellant concerning the family dispute regarding the division of land with appellant and his brother uncle of the victim Praveen, Dharam Pal - Respondent No. 2 herein and one V.S.Verma, and that Dharam Pal was in possession of private arms and used to threaten Captain Praveen's father - the appellant herein.

3.1 It was stated that on 07.06.1996, the village Chowkidar informed the Police in writing that around 7 a.m. the Panchayat was to be held in the village for resolving the property dispute between Dharam Pal and Raj Pal, who were real brothers. During the Panchayat meeting, Praveen Kumar and his father Raj Pal Singh - the appellant herein, reached at the place, which led to heated exchanges. Dharam Pal left the Panchayat and proceeded towards his house.

3.2 It was further stated that said captain Praveen and his father-in-law, armed with rifle and hockey-stick respectively, followed Dharam Pal, that Dharam Pal fired upon Praveen from his gun. Praveen sustained gunshot injury. He was taken to hospital in serious condition by the appellant and other members of the family. The information was registered as Crime Case No.19 of 1996 alleging offence under Section 307, IPC, at Bahadur Garh Ghaziabad Police Station.

3.3 The Appellant submitted an application on 08.06.1996 before the Police stating that his elder brother's son - Rajveer was dissatisfied with the partition of the properties taken place between the Appellant Raj Pal and his two brothers named Vijay Pal and Dharam Pal. It was stated that Complainant was residing alone in his house and his son Praveen was employed in military service as Captain and that he had informed his son about the hostile attitude of Dharam Pal and his son.

3.4 It was further stated that said Praveen reached home on 07.06.1996 and on the same day, he left for Hapur Village to attend marriage. On next day, that is, 08.06.1996 at around 8 a.m., Praveen Kumar returned home after attending the marriage. At that time, Dharam Pal, his son Rajveer and Sudhir forcibly dragged

Praveen Kumar towards the first floor from the parking area with an intention to kill him. It was alleged that Sudhir had with him a country-made pistol.

3.5 As Praveen started shouting, other persons named Raj Pal Singh appellant herein, Jal Singh, Omkar Singh and Balbir Singh rushed to the spot to save him. Sudhir, who had country-made pistol, threatened to shoot. Dharam Pal instigated Rajveer to kill and Rajveer shot at Praveen from the licensed gun of Dharam Pal. The injured Praveen was declared dead when taken to the Military Hospital. The Crime Case No.19 of 1996, registered earlier for the offence under Section 307, IPC, was converted into offence under Section 302 r/w Section 34, IPC.

[4] Heard learned counsel Mr. Vishwa Pal Singh for the appellant and learned counsel Mr. Mushtaq Ahmed for the respondents.

[5] The trial Court, upon considering the evidence led before it, convicted the respondent nos.1 to 3 herein for the offence under Section 302 r/w Section 34, IPC, and sentenced them as above. In the appeal, the High Court appreciating the evidence on record inter alia noticed the oral evidence by informant Raj Pal (PW-1) and Jal Singh (PW-2), who were the eyewitnesses, then deposed on the incident inter alia that when the family returned from the marriage party by car at around 8 a.m., Dharam Pal, Rajveer and Sudhir dragged Praveen. At that time, all the three had caught hold of Praveen and after dragging Praveen, pulled and pushed him up the staircase.

5.1 According to the story told by PW-1 and PW-2, Sudhir threatened them with country-made pistol which was in his hands. The witnesses further stated that Dharam Pal instigated his son Rajveer to fire at Praveen and that Rajveer fired at Praveen from the gun of his father Dharam Pal. Praveen fell down having been injured by the gunshot. It was then stated that Dharam Pal hit Praveen by hockey-stick. It was deposed that at that time, villagers arrived at the spot and the accused persons ran away. The injured Praveen was taken to the Military Hospital where he was declared dead.

5.2 In addition to the above witnesses, Col. Ms. Savitri Datti, Senior Registrar Military Hospital (PW-4), Sub-Inspector Man Singh (PW-5) who had prepared the inquest report, and one Devi Deen (PW-6) who had registered the report submitted by the Chowkidar of the village, were examined. Lt. Colonel Dr. Sandeep Rastogi (PW-7) stated that before Praveen could be admitted in the hospital he was already dead. Chowkidar named Tunda (PW-8) who submitted the report dated 08.06.1996 before the police station was examined. He stated that he had not seen the act of firing. The other witnesses included the Record Keeper (PW-9) in the hospital and one Sub-Inspector - Vijay Kumar Singh (PW-10) who recorded the statement of the witnesses and the Second Investigating Officer Inspector Rajiv Kumar (PW-11).

5.3 Amongst the different witnesses included Charan Singh (DW-1), who was a resident of the same village and one Lal Singh (DW-2), who stated that there was enmity between the accused and the complainant.

5.4 The medical evidence is in the form of Dr.V.K. Bajpayee (PW-3), who performed the postmortem. The postmortem report prepared by him on 09.06.1996 indicated the following ante-mortem injuries, (i) Wound of penetrating firearms bullet in left thigh 3cm x 2 cm x muscle deep in upper portion of left thigh, outer side blackish colour with friction. Direction was below and forward and was upper side. (ii) Wound of penetrating many pellets in the area of 10 cm x 6 cm in front of right thigh 0.33 cm x 0.6 cm to 0.66cm x 0.5cm c muscle deep. 15cm x towards right knee below forward and inward. (iii) One incised wound 4cm x 1 cm in the upper portion of the head towards right 10 cm above. (iv) One scrap wound 4cm x 3 cm x in upper backside of the right hand. In the opinion of the Doctor, the death of deceased Praveen occurred due to shock and haemorrhage.

5.5 In their statement recorded under Section 313, CrPC, the accused persons denied the charges stating that they were falsely implicated due to enmity. Dharam Pal stated in his statement under Section 313, CrPC, that on 07.06.1996, when the Panchayat was taking place, the complainant and his supporters started assaulting the accused persons and, therefore, he left the Panchayat to go to his room on the first floor of the house when he heard the sound of gunshot. The statement of Rajveer was that he was employed as Professor in Shimbhawli College, staying at that place since last 12 years and was not present in the village at the time of the incident. The third accused - Sudhir stated in his statement under Section 313, CrPC that he was a distant relative of Rajveer and was not present when the incident took place. He stated that he was a student of B.Sc. in the very college where Rajveer was Professor. All of them stated that they had been falsely implicated in the case.

[6] The High Court, in appreciating the above cluster of evidence in their interaction, found that it was conspicuous that in the report dated 08.06.1996, which was filed by complainant Raj Pal on 12.06.1996, nothing was mentioned about the inflicting of injury on Praveen by hockey-stick by any of the accused including Dharam Pal, though it was mentioned that accused had hockey-stick with him. The role of Dharam Pal, as mentioned in the said report, was only that he and Sudhir, with the help of arms which they had been allegedly carrying, acted to restrain the complainant and other village people when they tried to interfere with the act of dragging of Praveen.

6.1 It did not come out from the evidence, even inferentially, that any of the accused had any weapon, much less the pistol or gun in their hand when they were dragging Praveen towards the stairs. According to the story projected, at the time when the accused persons were pulling Praveen on the staircase, a country-made pistol was with Sudhir. While the complainant stated that he saw all the accused pushing and dragging Praveen, he could not pinpoint as to whether the clothes of Praveen Kumar were torn.

6.2 The dragging of Praveen by Dharam Pal did not inspire credence, inasmuch as the High Court rightly observed that Dharam Pal was 65-year-old person and was a cancer patient, for whom it was not possible to pull and drag Praveen an armyman. Furthermore, as per the story, the complainant noticed that Sudhir had with him

country-made pistol in his hand when all the accused were dragging Praveen towards the staircase from the parking area.

6.3 The staircase had the width of three to five feet and the dragging was done nearly for 20 steps, noted the High Court. Upon appreciation of the evidence, the same was found to be not credible as it was not possible to believe that a serving captain in the Indian Army, who was a young man, could be dragged in the manner as suggested, by three persons.

6.4 It was noticeable also that the First Information Report did not mention that Dharam Pal had any hockey-stick in his hand at the time of the dragging of Praveen. It is also not disclosed as to wherefrom such hockey-stick, if any, was brought. Similarly, Jal Singh (PW-2) also admitted in his evidence that he was not aware as to how and from where Sudhir had picked up the country-made pistol.

6.5 While Jal Singh (PW-2) stated that he saw Sudhir to be in possession of pistol at the time of dragging of Praveen, it was not suggested in the evidence anywhere as to wherefrom Sudhir got the pistol. The High Court reasoned that if the suggestion was that Rajveer had gone to collect the country-made pistol, it would imply that there were only two persons who held Praveen and dragged him, which was even further unbelievable since one of them was 65 years of age suffering from cancer.

6.6 The reading of the evidence suggested, rightly observed the High Court, that none of the accused persons had any firearm in their hands at the time they were allegedly dragging Praveen Kumar towards and thereafter, upwards the staircase. PW-2 suggested that the staircase was not in L-shape but had a turning.

6.7 It is also noticed by the High Court in the report of Chowkidar of the village (PW-8), it was the information given about the time at the first point of time, what was mentioned was that Praveen Kumar followed Dharam Pal and after Dharam Pal left the Panchayat, Dharam Pal fired upon Praveen in defence. However, the report submitted by the complainant father - appellant herein, the role of firing was not attributed to Dharam Pal but it was stated that upon exhorting of Dharam Pal, Rajveer had fired upon Praveen Kumar.

[7] In other words, in acquitting the respondents, the following aspects weighed with the High Court,

(a) The entire story of the prosecution did not inspire credibility and was highly improbable when it was claimed that a serving captain in the Indian Army - Praveen Kumar, was dragged by three persons for 14 steps and thereafter, pulled him to a staircase which was only three to five feet wide.

(b) One of the accused was aged 65 years and had been suffering from cancer.

(c) The alleged possession of the country-made pistol with Sudhir was not explained. The complainant did not see any weapon with any of the Respondents when they started dragging the deceased. Possession of the pistol and its use by Sudhir are not convincingly born out from the evidence.

(d) The allegation that Dharam Pal fetched a hockey-stick to strike blows on the head of Praveen was also not explained in the evidence. There was no suggestion as to how and from where Dharam Pal fetched the hockey- stick.

(e) The High Court refused to believe as probable that Rajveer went inside the room, picked up gun, whereas the other two succeeded in holding Praveen down at the staircase.

(f) The Complainant submitted an application dated 08.06.1996 only on 12.06.1996 before the Police. In addition to this discrepancy in the dates, there was no mention in the said complaint regarding the incident, which took place on 07.06.1996. In the said complaint- report, it was stated that Praveen shot Dharam Pal and Dharam Pal shot Praveen, however, Dharam Pal was not attributed with the role of shooting.

(g) The investigation and prosecution were not in the direction of the case disclosed to the effect that Dharam Pal fired at Praveen on 07.06.1996.

[8] Thus, the evidence adduced as above by the prosecution suffered from material discrepancies and the whole story put up lacked credence. Although the alleged weapon of offence, the licensed firearm belonging to Dharam Pal - Respondent No. 2, was recovered, no endeavour appears to have been made to subject the same to expert ballistic examination in order to establish whether the bullets or pellets which caused the fatal injuries had been fired therefrom. Upon a close consideration of the evidence appreciated by the High Court, the reading by the High Court is a plausible reading justifying the conclusion. The view taken by the High Court does not appear to this Court to be in any way unreasonable or one which would warrant substitution by this Court.

[9] It is well settled that the guilt of the accused and the commission of the offence by the accused have to be established beyond reasonable doubt. The circumstances should suggest "must or should" and not "may be". It was stated by this Court in **Shivaji Sahabrao Bobade vs. State of Maharashtra**, 1973 2 SCC 793 that the distinction between "may be proved" and "must be proved" is not one of mere grammatical, but it is a legal distinction.

9.1 In **Shivaji**, 1973 2 SCC 793 the Court observed,

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.."

(Para 19)

9.2 It is a well-settled principle enunciated by series of judgments of this Court that there must exist "substantial and compelling reasons" to upset the acquittal. Once the court acquits the accused, the presumption of innocence is reinforced. Thereafter, the interference by the appellate court would be minimal and has to be guided by strong and cogent reasons. Reversal of acquittal should not be a matter of course just because the other view is considered to be possible by the appellate court. Even when

the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor.

9.3 In **Chandrappa and Others vs. State of Karnataka**, 2007 4 SCC 415 this Court laid down on the scope of powers of the appellate court to re-appreciate, review or reconsider the evidence and interfere with the acquittal. It was held that where two views are possible on the evidence on record, one taken in favour of the accused acquitting him should not be disturbed by the Appellate Court. In that case, the trial Court had given the benefit of doubt to the accused finding that the prosecution had not examined the material witnesses, that the testimony of the witnesses was unreliable and inconsistent, that the prosecution story was unnatural and that the knife produced before the Court as muddamal article was not the same which was used by the accused in inflicting injuries etc. There were also other circumstances which created doubt about the prosecution story. This Court held that the High Court was in error in interfering with the possible view taken by the Trial Court on the evidence and the reversal of the order of acquittal by the High Court was not justified.

9.4 In **Chandrappa**, 2007 4 SCC 415 after elaborate discussion as to how the appellate court should approach the order of acquittal while exercising appellate jurisdiction, certain principles regarding the powers of the appellate court to be exercised against an order of acquittal, were laid down,

"(i) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(iii) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(iv) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." (Para 42)

9.5 It was observed in **Chandrappa**, 2007 4 SCC 415 as under,
 "...the trial court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of the appellate court are as wide as that of the trial court and it can review, reappreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court. In this case, a possible view on the evidence of prosecution had been taken by the trial court which ought not to have been disturbed by the appellate court. The decision of the appellate court (the High Court), therefore, is liable to be set aside."

(Para 44)

[10] When in the present case, the High Court has recorded acquittal of the respondents reversing the decision of the trial Court by appreciating the relevant aspects emerging from the evidence and thereby arriving at a plausible conclusion, acquitting respondent Nos.1 to 3, on such basis, this Court is well-inclined to accept and maintain the same.

[11] Consequently, the appeal fails and the same is dismissed. In view of dismissal of the appeal, interlocutory applications shall not survive

 2026(1)MBAJ8

IN THE SUPREME COURT OF INDIA

[From CHHATTISGARH HIGH COURT]

(Hon'ble Judge: Vikram Nath; Sandeep Mehta)

Criminal Appeal No 5315 of 2025 **dated 08/12/2025**

Govind Mandavi

Versus

State of Chattisgarh

MURDER CONVICTION

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 460 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 164, Sec. 313 - Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 Sec. 3 - Murder Conviction - Accused convicted for murder and house trespass under penal provisions - Prosecution relied upon statement of wife of deceased recorded after delay - Identification of accused based on removal of mask during attack - Recovery of blood-stained clothes, axe and other articles attributed to accused - Evidence of witness found unreliable due to inconsistencies and belated recording of statement - Material contradictions found in recovery process and lack of corroborative forensic support - Appellate Court re-evaluated testimony and held conviction unsafe - Benefit of doubt extended - Conviction set aside - Appeal Allowed

Law Point: Conviction for serious offences cannot rest on uncorroborated delayed statement of related witness and doubtful recoveries; benefit of doubt must be given when prosecution evidence lacks reliability and consistency.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 460

Code of Criminal Procedure, 1973 Sec. 161, Sec. 164, Sec. 313

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3

Counsel:

Pragya Baghel, Azad Bansala, Abhishek Pandey, Prashant Kumar Umrao

JUDGEMENT

Sandeep Mehta, J.- [1] Heard.

[2] Leave granted.

[3] The appellant-Govind Mandavi [Hereinafter, referred to as the "accused-appellant".], along with coaccused Narender Nag and Mansingh Nureti (both of whom stand acquitted by the High Court of Chhattisgarh at Bilaspur [Hereinafter, referred to as the "High Court"]), were put to trial before the learned Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, North Bastar, Kanker [Hereinafter, referred to as the "trial Court"], in Special Penal Case No. 65 of 2021. Upon conclusion of the trial, vide judgment and order dated 28th January, 2023, the accusedappellant and co-accused Mansingh Nureti were convicted for the offences punishable under Sections 302/34 and 460 of the Indian Penal Code, 1860 [For short, 'IPC'], and were sentenced in the following manner:

Sections	Sentence	Penalty/Fine	Sentence in default of payment of fine
Section 302 r/w 34 IPC.	Life Imprisonment	Rs.10,000/-	Six months RI
Section 460 IPC.	Ten Years RI	Rs.5000/-	Three months RI

[4] Accused Narender Nag was held guilty of the offences punishable under Section 302/34 IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [For short, 'SC/ST Act'], and was sentenced as follows:

Sections	Sentence	Penalty/Fine	Sentence in default of payment of fine
Section 302 r/w 34 IPC.	Life Imprisonment	Rs.10,000/-	Six months RI
Section 3(2)(v) of SC/ST Act.	Life Imprisonment	Rs.10,000/-	Six months RI

[5] In appeal, the High Court set aside the conviction of the two co-accused, Narender Nag and Mansingh Nureti, whilst upholding the conviction and sentence of the present accused-appellant, vide the common judgment and order dated 14th January, 2025, passed in the clubbed criminal appeals, including Criminal Appeal No. 1298 of 2023 preferred by the accused-appellant.

Factual Background

[6] Succinctly stated, facts germane for adjudication of the present appeal are set out hereinbelow.

[7] Heeralal Hidko (PW-1) submitted a merg intimation [(Exh P/1)] (oral report) to the SHO, Police Station Bhanupratappur, District Kanker, Chhattisgarh, on 18th April, 2021, at about 7:25 a.m., alleging inter alia: -

"I am a Native resident of Village Iragaon, Durgupara, I work in Farming sector. Like every day routine, on 17/04/2021, my son Bivan and daughter-in-law Sukmai Hidko both (sic) were sleeping inside the Farm hut around 11:30 my daughter-in-law Sukmai came home and told me that "2 unknown masked persons came at around 11:00 one of whom was tall and another was short-heighted and thin and held sickle In his hand. They called and woke up my husband Bivan and took him away from the farm hut, I followed them and stood on the door. After a while, my husband screamed "Aye Daayi! O Daayii" I got scared and ran away." As soon as I got this news, I took Sahdev Kadiyam, Kushal Kawde and Dhannaram Anchala, and others with me to my field and in the light of my torch, I found my son Bivan lying dead, soaked in blood. My son is dead, some unknown person has killed my son with a sharp weapon. Due to the midnight and it being a forest area, I took care of the dead body of my son, and in the morning, I came here to report."

[8] On the basis of the aforesaid statement, First Information Report [For short, 'FIR'; Exh. P/2] No. 106 of 2021, dated 18th April, 2021, came to be registered at the Police Station for the offence punishable under Sections 302/34 IPC against unknown assailants.

[9] Evidently, a perusal of the FIR (Exh. P/2) makes it clear that the informant Heeralal Hidko (PW-1) was not an eyewitness to the incident; rather, his knowledge of the occurrence was entirely based on the information furnished to him by Smt. Sukmai Hidko (PW-2), his daughter-in-law and wife of the deceased Bivan Hidko.

[10] The statement of Smt. Sukmai Hidko (PW-2), wife of the deceased and daughter-in-law of Heeralal Hidko (PW-1), under Section 161 of the Code of Criminal Procedure, 1973 [For short, 'CrPC'] came to be recorded on 21st April, 2021, i.e., after four days of the incident and at that point of time, for the first time, it was alleged by the lady that during the assault being made on her husband, the mask of one of the assailants came off and thus, she was able to identify the said assailant as being the appellant-Govind Mandavi.

[11] Acting upon the material collected during the course of investigation, the Investigating Officer, Shri Damon Lal Bhuarya (PW-14), apprehended the accused-appellant as well as the two co-accused on 22nd April, 2021, as per duly prepared arrest memoranda [Exh. P/21-23]. Acting in furtherance of the respective disclosure/memorandum statements [Exh. P/14, 16, and 18] furnished by all the three accused, the police effected the recoveries attributed to them as per the following table: -

Accused	Exhibit(s)	Description of Articles
Govind Mandavi (accused appellant)	P/15	1. One Mobile Phone. 2. One Axe, which has been used in the commission of the offence having blood-like stains. 3. One half T-shirt having blood-like stains. 4. One lower having blood-like stains. 5. One black towel having blood-like stains. 6. One pair of shoes having blood-like stains. 7. Rs.500/- cash.
Mansingh Nureti	P/17	1. One motorcycle, which is used in the offence. 2. One T-shirt having blood like stains. 3. One towel having blood-like stains. 4. Rs.200 cash.
Narendra Nag	P/19	1. One full shirt having blood like stains. 2. One half jeans pant having blood-like stains. 3. One towel having blood-like stains. 4. Rs.500/- cash.

[12] The prosecution alleged that all recovered articles were forwarded to the Regional Forensic Science Laboratory, Jagdalpur (Bastar), for chemical and serological examination. As per the FSL report [Exh. P/40], human blood was detected on the axe recovered from the accused-appellant (Article-C), the shoes seized from him (Article-E), the T-shirt and full pant of coaccused Mansingh Nureti (Articles F-1

and F-2), the full pant and towel attributed to co-accused Narender Nag (Articles G-1 and G-3), as well as the shirt and half-pant of the deceased (Articles H-1 and H-2). However, the blood group could not be determined as the serology report noted that the samples had disintegrated and the result was, therefore, inconclusive.

[13] The accused appellant was subjected to a Test Identification Parade [For short, 'TIP'] conducted by Moksha Dewangan, Tahsildar (PW-16), on 22nd April, 2021, during which he is alleged to have been identified by the purported eyewitness, Smt. Sukmai Hidko (PW2).

[14] Pursuant to the filing of the chargesheet, the trial Court proceeded to frame charges against all the three charge-sheeted accused.

[15] The accused denied the charges and claimed trial.

[16] To bring home the charge against the accused persons, the prosecution examined as many as sixteen witnesses and exhibited certain documents and material objects. The incriminating material emerging from the prosecution evidence was put to the accused persons in their examination under Section 313 CrPC, wherein they denied the allegations in toto, asserting that they had been falsely implicated. No evidence was adduced in defence.

[17] Upon appreciation of the oral and documentary evidence brought on record, and after considering the submissions advanced on behalf of the prosecution and the defence, the learned trial Judge proceeded to convict and sentence all the three accused persons as aforesaid, vide judgment dated 28th January, 2023.

[18] In appeal, the High Court affirmed the conviction of the accused-appellant while setting aside the conviction of the remaining two co-accused, vide judgment dated 14th January, 2025. The High Court principally relied upon the testimony of Smt. Sukmai Hidko (PW-2); her identification of the accused-appellant in the TIP, which was proved by the Executive Magistrate (Tahsildar) Moksha Dewangan (PW-16) and the dock identification. The Court further drew support from the FSL report, noting that human blood was detected on the axe and shoes recovered pursuant to the memorandum statement of the accused-appellant, duly proved through the testimony of Sahdev Kadyam (PW-7).

[19] The High Court additionally held that the motive attributed to the accused-appellant stood firmly established on the basis of the evidence of PW-1, PW2, PW-4, PW-6, PW-7, PW-8, and PW-9, who consistently deposed that the accused-appellant is the brother of Binda Bai (PW-6), the second wife of the deceased. The record reflected that the deceased had contracted a second marriage with Binda Bai (PW-6), as his first wife, Smt. Sukmai Hidko (PW-2), was unable to conceive. A son was born from the second wedlock, giving rise to frequent quarrels between the two wives over taking the child in the lap. Owing to these disputes, Binda Bai (PW-6) began residing at her parental home, and community panchayat meetings were convened on multiple occasions, during which altercations also ensued.

The High Court concluded that, as the accusedappellant supported his sister and shared her grievances against the deceased and his family, a strong motive existed for him to commit the offence.

[20] The said judgment now forms the subject matter of challenge in the present appeal by special leave.

Submissions on behalf of the accused-appellant

[21] Learned counsel appearing for the accusedappellant advanced the following submissions in assailing the conviction recorded by the trial Court and consequently affirmed by the High Court:

(i) That the accused-appellant was not named in the FIR [Exh. P/2] (Exh. P/2) lodged by Heeralal Hidko (PW-1). It stands admitted that PW-1 lodged the report purely on the basis of the information furnished to him by the alleged eye-witness Smt. Sukmai Hidko (PW-2). Thus, omission to mention the name of the accused in the very first version, despite such claimed knowledge, is a material lacuna which, according to learned counsel, goes to the root of the matter and gravely undermines the credibility of the prosecution case.

(ii) That the explanation tendered by the prosecution for the omission of identity of the accused in the FIR (Exh. P/2), that the informant, Heeralal Hidko (PW-1), was not an eye-witness, and that Smt. Sukmai Hidko (PW-2) allegedly fell ill upon witnessing the assault, is wholly implausible. Learned counsel submitted that in the earliest version narrated by Smt. Sukmai Hidko (PW-2) to her father-in-law immediately after the incident, it was pertinently stated that the assailants had covered their faces with masks. However, in stark contrast, her statements recorded after significant gap, under Sections 161 CrPC and 164 CrPC on 21st April, 2021 and 21st April, 2024 respectively, contain substantial and material improvements, including her claim of having identified the accused-appellant as his mask moved during the incident. Such embellished version, introduced after an unexplained delay, is inherently unreliable and wholly unworthy of credence.

(iii) That the conduct of the witness belies the prosecution story. Smt. Sukmai Hidko (PW2) was indeed conscious and capable of narrating the incident, as is evident from the fact that the informant Heeralal Hidko (PW1), could lodge the merg intimation (Exh P/1) on the basis of her version; thus, there was no reason for her to omit the names of the assailants at that very earliest point of time. Learned counsel submitted that the contents of the merg intimation (Exh P/1) unmistakably demonstrate that Smt. Sukami Hidko (PW-2) had provided a detailed information of the incident to her father-inlaw; hence, had she actually identified any of the perpetrators, she would not have omitted to disclose their names to him. Consequently, the absence of the name of the accusedappellant in the merg intimation (Exh. P/1) strikes at the root of the prosecution case.

(iv) That the prosecution's attempt to justify the delayed disclosure of the names of the assailant on the pretext of the illness of Smt. Sukmai Hidko (PW-2) is wholly unconvincing. There is no such corroborative evidence in form of any medical report etc. to support the assertion that Smt. Sukmai Hidko (PW-2) was in such a debilitated state as to be incapable of naming her husband's assailant for three consecutive days. It stands admitted on record that the accused-appellant is the brother of Smt. Binda Bai (PW-6), the second wife of the deceased-Bivan Hidko, and that there existed palpable animosity between the two branches of the family, an aspect borne out from the testimonies of Heeralal Hidko (PW-1) and Smt. Sukmai Hidko (PW-2). In this backdrop, the assertion made by Smt. Sukmai Hidko (PW-2), that the accused-appellant's mask purportedly fell off during the assault, enabling her to identify him, at a belated point in time when her statements under Sections 161 and 164 CrPC were recorded, is a clear embellishment. This belated story, according to learned counsel, reflects a deliberate attempt by the witness to falsely implicate the appellant owing to the pre-existing enmity.

(v) That as the accused-appellant was well known to Smt. Sukmai Hidko (PW-2) from the prosecution's attempt to establish his complicity by conducting a TIP indicates that Smt. Sukmai Hidko (PW-2) could not identify any of the assailants at the time of the incident. Once the accused had been named by the witness, there would be no rationale for holding a TIP of the same accused.

(vi) That the recoveries on which the trial Court as well as the High Court relied heavily are inconsequential, because mere detection of human blood on the articles does not, by itself, provide any corroboration to the otherwise flimsy evidence of the witnesses. The prosecution has neither proved the blood group on the articles allegedly recovered at the instance of the accused nor the blood group of the deceased, and hence, the recoveries are rendered inconsequential. Furthermore, the link evidence essential to prove the sanctity of the material objects was not proved by leading credible evidence. On these grounds, learned counsel implored the Court to accept the appeal, set aside the conviction of the accused-appellant, and direct his release from prison.

Submissions on behalf of the respondent-State

[22] Per contra, learned standing counsel for the State of Chhattisgarh supported the impugned judgment. He submitted that the accused-appellant was named in the first statement under section 161 CrPC of the wife of the deceased, Smt. Sukmai Hidko (PW-2), which was recorded immediately after she regained strength. He urged that it was entirely natural for a woman from a rural background, having witnessed a brutal assault on her husband, to be in a state of deep shock, and hence, her inability to immediately disclose the names of the assailants to her father-in-law, Heeralal Hidko (PW-1), was not unusual or unnatural. He further urged that the accused-appellant, having been named and identified by the eyewitness Smt. Sukmai Hidko (PW-2) in her sworn testimony, coupled with her identification of the accused-appellant in the TIP

and the plausible explanation furnished for the delayed disclosure, renders her testimony wholly reliable.

[23] Thus, learned counsel urged that the conviction of the accused-appellant as recorded by the trial Court and affirmed by the High Court based on concurrent findings of fact does not warrant any interference.

Discussion and Analysis

[24] We have given our thoughtful consideration to the submissions advanced by learned counsel for the parties and have carefully re-analysed the evidence available on record.

[25] At the outset, we may observe that the factum of the death of Bivan Hidko being homicidal is not in dispute, which stands established from the testimony of the medical jurist Dr. A.K. Dhruw (PW-11). Hence, we need not burden the judgment by dwelling further on this aspect of the prosecution case.

[26] It is also undisputed that the FIR (Exh. P/2) was lodged on the basis of the merge statement (Exh. P/1) of Heeralal Hidko (PW-1), given at Police Station Bhanupratappur, District Kanker, Chhattisgarh on 18th April, 2021 at 7:25 a.m., wherein he categorically stated that his daughter-in-law came to him at about 11:30 p.m. and informed him that **two unknown masked persons** came at around 11:00 p.m., one of whom was tall, while the other was short-heighted and lean, and was holding a sickle in his hand. They called out to Bivan, woke him up, and took him away from the farm hut. Smt. Sukmai Hidko (PW-2) followed them and stood at the door, and upon hearing her husband scream, she got scared, and ran away.

[27] On receiving this information, the informant Heeralal Hidko (PW-1), accompanied by Sahdev Kadiyam (PW-7), Kushal Kawde (PW-3), Ramprasad Netam, and Ghana Anchala, proceeded to the field where, in the light of a torch, they found Bivan Hidko lying dead in a pool of blood. It was specifically alleged in the merge information (Exh P/1) that some unknown persons had assaulted and killed Bivan with a sharp-edged weapon.

[28] A very significant fact which remains undisputed is regarding the prior enmity between the prosecution witnesses (PW-1 and PW-2) and the accused-appellant herein. It is an admitted position that during the subsisting marriage of Smt. Sukmai Hidko (PW-2) with the deceased Bivan Hidko, he married Smt. Binda Bai (PW-6), the sister of the present accused-appellant, and serious differences had arisen between the parties owing to this relationship. Panchayats were convened, wherein quarrels flared up between them. It is in this backdrop of prior enmity that we shall proceed to appreciate the evidence of the two star witnesses, Heeralal Hidko (PW-1) and Smt. Sukmai Hidko (PW2), on whose testimony the entire prosecution case hinges.

[29] Heeralal Hidko (PW-1) testified as below: -

"(1) I know the three accused (Govind Mandavi, Narendra Nag, Mansingh Nureti) in the Court. Bivan Hidko was my son who has died. Our caste is Gond.

(2) I live in Durgupara village of Iragaon. I have a big Farm hut in my field at Imlipara. My son Bivan Hidko and his wife Sukmai Hidko lived in the Farm hut built in the field. On 17.04.2021, at around 11:00 pm, my daughter-in-law Sukmai Hidko came to my house and told me that Govind and Mansingh came with sickle, at that time, I and my husband were sleeping on separate cots. Govind and Mansingh took my husband Bivan to the store room and hit him on the face with the sickle. On being told the above by my daughter-in-law, I, Sahdev Kadiyam, Kushal Kaudo, Ramprasad Netam, Ghana Anchala went to the spot and saw that my son Bivan Hidko was lying on his back on the floor in the store room and there was an injury on his face near his right eye and blood was oozing from there.

(3) I reported the incident on 18.04.2021. When the Merg intimation was read out to the witness, he said that he had written such a report. The Merg intimation was marked Exp/01, and when the FIR was read out to the witness, he said that he had written such a report. The FIR was marked Exp/02."

The witness was declared hostile by the Public Prosecutor and was confronted with leading questions:

"(8). It is correct to say that my son Bivan Hidko has two wives, his first wife is Sukmai Hidko and his second wife is Bindabai. It is correct to say that Bindabai was staying with her son at her maternal home in village Ghotha two months before the incident. I do not know that there was a quarrel between my son Bivan and his wife Bindabai. It is correct to say that a meeting was held in village Ghotha regarding Bivan and his wife Bindabai. It is correct to say that in the said meeting Bindabai had threatened Bivan.

(9). It is correct to say that Sukmai Hidko told me that a person was wearing a mask, mask opened and he saw him who was Govind. It is correct to say that Govind used to visit his sister Bindabai's house, so Govind knew that Bivan sleeps in the Farm hut. It is correct to say that Sukmai told that Govind came to the store room Farm hut with his two other companions as per the plan on the night of 17.04.2021 and Govind along with one of his companions went inside the shed with a sickle and his other companion hid in the cowshed. It is correct to say that Sukmai told that when Govind came out with Bivan, all the three companions together took Bivan to the store room about 50 meters away and hit him with a fatal stick with the sickle They attacked and killed him. **It is correct to say that my daughter-in-law Sukma had told that there were two masked men. It is correct to say that my daughter-in-law Sukmai was not well at that time and she told that she had gone to sleep due to her ill health. It is correct to say that after the last rites of the deceased, on 21.04.2021, Sukmai Bai had told that there were not two but**

three unknown masked men. It is correct to say that my daughter-in-law Sukmai Bai had told the names of the three accused. It is correct to say that Sukmai Bai told that the above three persons together killed Bivan. I had told the above things to the police while giving the statement of ExP/03 and ExP/04.

.....

(13). I do not know about the incident myself but my daughter-in-law Sukmai told me about it. It is incorrect to say that I did not go to the spot.

(14). It is incorrect to say that the police did not read out to me what was written in the FIR and the and the merg intimation. The witness himself says that they read it out to me. It is correct to say that at the time of writing the merg intimation and the First Information Report, I had mentioned two unknown masked men. It is correct to say that at that time my daughter-in-law had told about two unknown masked men. It is correct to say that when the police interrogated me, I had told about two unknown masked men.

.....

(16) It is correct to say that Bivan made Bindabai wear bangles, as Sukmai did not give birth to a child. It is correct to say that Bivan has a son from Bindabai. It is incorrect to say that after Bindabai gave birth to a son, since then there used to be quarrels between Bivan and Bindabai. The witness himself says that Bindabai did not allow Sukmai to touch her son, therefore, there used to be quarrels between Bindabai and Sukmai. It is correct to say that many social meetings were held regarding the quarrel between Bindabai and Sukmai. The witness himself says that Bindabai and Sukmai were counselled in the social meetings. It is correct to say that due to this quarrel, Bindabai was living at her maternal home."

[Emphasis supplied]

[30] The sole eye-witness Smt. Sukmai Hidko (PW-2) testified as follows:

"(2). I lived with my husband Bivan in a store room Farm hut situated in Imalipara of village Iragaon. On the date of incident, I was with my husband in the Farm hut. On the night of incident, I and my husband were sleeping in store room Farm hut when both the accused present in Court including Govind were standing near the door of our store room Farm hut. They opened the door of the Farm hut and entered the house and Govind asked my husband to go outside. My husband refused to go outside then Govind caught him and took him to store room and Govind hit my husband with sickle. My husband called out saying 'Aye Dai O'. After this, I went to my father-in-law and told him the above incident. After this, my father-in-law came to store room Farm hut with some people. After this, he went to the police station to report the same night.

(3). When the police interrogated me, I told them what I had seen. The police interrogated me twice.

.....

(6). I went to the Tehsil office of Bhanupratappur. After the identification proceedings were conducted there, I identified Govind and the other two accused present in the Court."

The public prosecutor declared the witness to be hostile and put her leading questions.

"(7). It is correct to say that I was not able to have a child, so my husband, Bivan, made Bindabai wear bangles and married her. It is correct to say that Bindabai has a son from Bivan. I do not know that Bivan doubted Bindabai's character. The witness herself says that both Bivan and Bindabai lived well. It is incorrect to say that Bivan doubted Bindabai's character, so she used to go to her maternal home. The witness herself says that Bindabai used to go to her maternal home without informing, so two-three social meetings were held and Govind beat up the wife in the social meeting. It is correct to say that in the social meeting, Govind had threatened my husband Bivan that he will take care of him/he brought Binda Bai back after three social meetings. Bindabai went to her maternal home for the fourth time and did not return after that. The witness himself says that when the fourth social meeting was held, Govind bad said that he would take care of my husband.

(8). The date of the incident was Saturday, 17th. I cannot say that the date was 17.04.2021. it is correct to say that on the date of the incident, my health was not good, so I was sleeping after taking medicine. It is correct to say that I had told my father-in-law about the incident and my health was not good, so I went to sleep after telling my father-in-law about the incident.

(9). It is correct to say that after my husband's funeral, I told my father-in-law, bother-in-law and other family members that there were not two masked men but three men. It is correct to say that I asked the masked men where they were taking my husband. It is correct to say that one of the masked men called me 'didi' and I tried to escape his voice. I had recognised him and his mask had also fallen off. It is correct to say that he was Govind. The witness herself says that I recognised Govind when he said 'Chal Didi' to me.

(10). At the time of the incident, Bindabai was staying at her maternal home. Govind must have killed Bivan, thinking that Bivan would not keep Bindabai. It is correct to say that I had told all the above facts to the police while giving the statement of ExP/05 and ExP/06."

Cross-examination by Shri B.N. Nishad Advocate on behalf of the accused Govind Mandavi and Narendra Nag

"12. It is incorrect to say that two people came wearing masks. The witness herself says that two people came in the shade of the house, and one person was standing near the shade door. It is correct to say that the people who came were wearing masks. It is incorrect to say that I could not recognize any of them because they were wearing masks. The witness herself says that I recognized Govind. It is incorrect to say that those people took my husband out of the house, and then I went to tell my father-in-law. The witness herself says that those people took my husband out of the house and beat my husband, then my husband shouted 'Aye Dai O' and after that I went to tell my father-in-law. It is incorrect to say that I did not see who killed my husband. The witness herself says that I came out of the house and was standing near the door and saw my husband being beaten. It is correct to say that the store room where the incident took place is as far from the Farm hut as the main entrance of the Court campus from the witness box (the distance from the witness box to the main entrance of the court campus would be about 40 meters). It is correct to say that the store room was dark. It is correct to say that after hearing my husband's voice, I went to call my father-in-law. It is correct to say that my father-in-law and other people went to the police station at night after their arrival.

.....

14. It is correct to say that I told my father-inlaw that two people were wearing masks. **It is incorrect to say that I did not tell my father-in-law the name of Govind. It is also incorrect to say that I did not mention the name of Govind while giving a statement to the police.**

15. It is correct to say that I have not had any child since my marriage. It is correct to say that, as I did not have any child, my husband Bivan made Bindabai his wife by making her wear bangles. It is correct to say that Binda Bai has given birth to a son from Bivan. It is incorrect to say that after Binda Bai had a son, my husband used to have disputes with me. The witness herself says that Binda Bai did not let her son touch me. It is correct to say that Binda Bai did not let her son touch me; therefore there used to be disputes between Binda Bai and me. It is incorrect to say that because of disputes between Binda Bai and me, she used to go to her maternal home. The witness herself says that Binda Bai used to go to her maternal home on her own. It is correct to say that three-four social meetings were held because of Binda Bai going to her maternal home. It is incorrect to say that it was our fault;

therefore the society separated my father-inlaw, my husband and me from the society. The witness herself says that the people of our society have not ostracized us. It is incorrect to say that I used to have a dispute with Binda Bai and hence I am taking her brother Govind's name to implicate him. It is incorrect to say that we were angry with Binda Bai and her brother Govind

because Binda Bai did not return. It is correct to say that in the social meeting, the accused Govind had taken his sister Binda Bai's side."

(16). It is correct to say that the police brought me to the tehsil office. It is incorrect to say that at the time of identification proceedings only the three accused present in the court were present. The witness herself says that there were four-five more people with him and he made me identify each of the accused present in the court three times. After coming to the tehsil office, the police talked to me and said that you have to identify them. It is incorrect to say that the police told me the names of the three accused present in the court and said that I have to identify them. It is correct to say that the accused Govind is Bindabai's brother. It is correct to say that Govind had been visiting his sister Bindabai earlier, and hence I knew him earlier."

[Emphasis supplied]

[31] A close analysis of these statements reproduced supra, in context of the allegations made in the FIR (Exh. P/2), would highlight the following facts:

i) The FIR (Exh. P/2) contains no assertion that the mask of any of the assailants fell off during the incident, or that the eye-witness (deceased's wife), Smt. Sukmai Hidko (PW-2) was thereby able to identify any of the assailants.

ii) There is no assertion in the FIR (Exh. P/2) that Smt. Sukmai Hidko (PW-2) had fallen ill or was not in a position to speak after the incident.

iii) The FIR (Exh. P/2) discloses no material to suggest that, at the time when Smt. Sukmai Hidko (PW-2) informed Heeralal Hidko (PW-2) about the occurrence, she was aware that her husband had already died.

[32] In his examination-in-chief, Heeralal Hidko (PW-1) clearly stated that his daughter-in-law, Smt. Sukmai Hidko (PW-2) came to his house and informed him that Govind Mandavi and Mansingh Nureti had arrived armed with a sickle, taken Bivan into a store room, and assaulted him with the said weapon.

[33] In his cross-examination by the Public Prosecutor, Heeralal Hidko (PW-1) attempted to modulate his stance and claimed that Smt. Sukmai Hidko (PW-2) told him that the mask worn by one of the assailants had fallen off, enabling her to identify the person as Govind Mandavi.

[34] The witness Heeralal Hidko (PW-1), further admitted, in response to the Public Prosecutor's suggestion, that Smt. Sukmai Hidko (PW-2) had told him that Govind Mandavi, along with his companions, came to the store room, took the deceased-Bivan Hidko away, and thereafter the assault occurred.

[35] Heeralal Hidko (PW-1) further deposed that while Smt. Sukmai Hidko (PW-2) had initially mentioned the presence of two accused; she later stated on 21st April, 2021, that the assailants were three in number. Heeralal Hidko (PW-1) also admitted that his daughter-in-law, Smt. Sukmai Hidko (PW-2) had disclosed to him the names

of all the three accused. These answers were elicited in response to the leading questions put by Public Prosecutor.

[36] Smt. Sukmai Hidko (PW-2), in her examination-in-chief, stated that while she and her husband were sleeping in the store room at the farm, she saw two persons, one of whom was Govind Mandavi, standing near the store room. In this initial version, she did not allege that any of the assailants was wearing a mask. She further deposed that she identified the accused-appellant Govind Mandavi and the other two accused persons present in Court.

[37] It was only after the Public Prosecutor declared her hostile and put leading questions that she stated she had informed her father-in-law and other family members, after her husband's funeral, that the assailants were not two masked men but three men, and that one of the masked persons had addressed her as didi, enabling her to identify him by his voice to be the accused-appellant. She further claimed that his mask had also fallen off.

[38] A very important answer was elicited during the cross-examination of Smt. Sukmai Hidko (PW-2), on behalf of the accused-appellant and co-accused Narendra Nag. In response to question No. 14, she admitted that it was incorrect to say that she had not told her father-in-law the name of accused-appellant Govind Mandavi.

[39] Analysis of these facts leads to the irrefutable conclusion that the two star prosecution witnesses (PW-1 and PW-2) have attempted to modulate and improve their versions while deposing on oath. Their testimonies are full of embellishments and contradictions.

[40] A holistic overview of the evidence would make it clear that Smt. Sukmai Hidko (PW-2) shared with her father-in-law Heeralal Hidko (PW-1), the entire sequence of events, which she had seen and observed during the incident involving assault on her husband. It is not the case of the prosecution that when the witness Smt. Sukmai Hidko (PW-2) came rushing to her father-in-law Heeralal Hidko (PW-1) and gave him the details of the assault, she was so ill or otherwise incapacitated from disclosing the complete details of the incident to Heeralal Hidko (PW-1).

[41] As a matter of fact, going by the fardbeyan (Exh. P/1), the only omission in what the witness conveyed to Heeralal Hidko (PW-1) was the name of accused-appellant Govind Mandavi. This was far too crucial a fact for the witness to have forgotten or omitted while narrating the details of the assault on her husband, to her father-in-law Heeralal Hidko (PW-1). It is clear that the witness Smt. Sukmai Hidko (PW-2) described every other minute aspect such as the arrival of the masked men, the time at which they came, their physical features (one tall, one short and lean), the weapons they carried, the manner in which they awakened her husband, took him away from the farm hut, and the cries she heard thereafter. It is therefore completely unbelievable that she would have omitted to mention the name of the accused to her father-in-law on the ground that she was unwell. This omission strikes at the very

foundation of the prosecution's case, and it appears that, to overcome the same, a story was subsequently cooked up and introduced in the belated police statement of Smt. Sukmai Hidko (PW-2) suggesting that she had fallen ill and was therefore prevented from disclosing the name of Govind Mandavi to her father-in-law even though she had identified him by his voice and as his mask had fallen off.

[42] Furthermore, we are of the considered view that a serious doubt arises with respect to the genuineness of the statement given by Smt. Sukmai Hidko (PW-2) under Section 161 CrPC on 21st April, 2021. If Smt. Sukmai Hidko (PW-2) had, actually, named the accused-appellant in that statement, there was absolutely no justification for conducting a TIP of the accused-appellant Govind Mandavi at her instance, particularly as she admittedly knew the accused from earlier, the accused-appellant being the brother of Binda Bai (PW-6), the woman whom the deceased had betrothed during the subsistence of his marriage with Smt. Sukmai Hidko (PW-2).

[43] Thus, the belated introduction of the accusedappellant's name in Smt. Sukmai Hidko's (PW-2) 161 CrPC statement dated 21st April, 2021, appears to be a clear manipulation, devised to implicate the accused-appellant in the crime owing to prior enmity.

[44] In an identical fact situation, the effect of such a vital omission in the first information report was considered by this Court in the case of **Ram Kumar Pandey v. State of M.P.**, 1975 AIR(SC) 1026 The relevant observations from the said judgment are quoted hereinbelow:-

"8. The abovementioned first information report was lodged at Police Station Ganj on March 23, 1970 at 9.15 p.m. The time of the incident is stated to be 5 p.m. The only person mentioned as an eye-witness to the murder of Harbinder Singh is Joginder Singh. The two daughters Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, are mentioned in the FIR only as persons who saw the wrapping of the chadar on the wound of Harbinder Singh. What is most significant is that it is nowhere mentioned in the FIR that the appellant had stabbed Harbinder Singh at all. It seems inconceivable that by 9'15 p.m. it would not be known to Uttam Singh, the father of Harbinder Singh, that the appellant had inflicted one of the two stab wounds on the body of Harbinder Singh.

9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

10. Even Joginder Singh, PW 8, was not an eyewitness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is clear from the FIR that Joginder Singh had met Uttam Singh before the FIR was made. Uttam Singh did not mention there that any dying declaration, indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh. **The omission to mention any injury inflicted on Harbinder Singh by the appellant in the FIR seems very significant in the circumstances of this case.** Indeed, according to the version in the FIR, Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside.

.....

17. As regards the second and third points, we are unable to give credence to the version of the three alleged eyewitnesses as they were not mentioned as eyewitnesses in the FIR made in the circumstances indicated above.

18. Lastly, the alleged dying declaration is also not mentioned in the FIR. On the other hand, the FIR, mentions Joginder Singh who tried to prove the dying declaration only, as an eyewitness.

.....

21. Consequently, we allow this appeal and set aside the conviction and sentence of the appellant under Section 302/34, IPC If the appellant has already served the sentence awarded under Section 324 IPC, as it stated on his behalf, he will be released forthwith."

[Emphasis supplied]

[45] Hence, we are of the firm view that the omission of the names of the accused in the FIR (Exh. P/2), which was lodged on the basis of the information provided by Smt. Sukmai Hidko (PW-2) to Heeralal Hidko (PW-1) is fatal as it goes to the very root of the matter. The said omission completely impeaches the credibility of the prosecution's case.

[46] Once the fact of identification of the accused appellant by the witness Smt. Sukmai Hidko (PW-2) is eschewed from consideration, there remains no credible evidence on record to connect the appellant with the crime.

[47] The other incriminating circumstance is the purported recovery of the blood-stained articles said to have been effected pursuant to the disclosure/memorandum statement(s) of the accused. As has been mentioned above, none of the recovered

articles tested positive for any particular blood group, and hence, the same cannot be connected with the crime.

[48] Consequently, we are of the firm view that the trial Court as well as the High Court committed grave errors in facts as well as in law while appreciating the evidence available on record and convicting the accused-appellant for the offences alleged.

[49] The impugned judgments do not stand to scrutiny and are hereby set aside. The accused-appellant is acquitted of the charges. He shall be released forthwith from custody, if not required in any other case.

[50] The appeal stands allowed accordingly.

[51] Pending application(s), if any, shall stand disposed of

2026(1)MBAJ24

IN THE SUPREME COURT OF INDIA

[From MADHYA PRADESH HIGH COURT]

(Hon'ble Judge: Dipankar Datta; Augustine George Masih)

Criminal Appeal No 5301 of 2025 **dated 08/12/2025**

Dadu @ Ankush & Anr

Versus

State of Madhya Pradesh & Anr

CONVICTION UNDER SC/ST ACT

Indian Penal Code, 1860 Sec. 354, Sec. 323 - Code of Criminal Procedure, 1973 Sec. 374, Sec. 313 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 - Conviction under SC/ST Act - Appellants convicted for offences under IPC and SC/ST Act - Evidence showed discrepancies between written complaint and depositions - Victim did not attribute specific act to one accused - Injuries found simple and inconsistent with allegations - No independent witnesses examined despite claim that many saw incident - High Court ignored deposition of hostile witness supporting defence version of scuffle during festival - Finding that offence committed due to caste motive unsupported by evidence - Defence version probable showing altercation at pandal and false implication - Supreme Court held conviction unsustainable - Acquitted of all charges - Benefit of doubt extended - Appeal Allowed

Law Point: Conviction under SC/ST Act requires clear proof of caste-based intent and credible, consistent evidence; contradictions and absence of independent corroboration entitle accused to acquittal.

Acts Referred:

Indian Penal Code, 1860 Sec. 354, Sec. 323

Code of Criminal Procedure, 1973 Sec. 374, Sec. 313

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3

Counsel:

Rajat Sehgal, Aditya Vaibhav Singh Ga, Sarad Kumar Singhanian, Rashmi Singhanian

JUDGEMENT

Dipankar Datta, J.- [1] This appeal, by special leave, is at the instance of the two appellants, Dadu @ Ankush (A-1) and Ankit (A-2). It is directed against the judgment and order dated 18th January, 2024 of a learned Judge of the High Court of Madhya Pradesh at Jabalpur of dismissal of an appeal [Crl. Appeal No. 7239 of 2019] under Section 374(2), Code of Criminal Procedure, 1973 preferred by the appellants.

[2] Appellants stood trial in a case [Special Case No. 200010 of 2016] registered on the basis of a complaint lodged by the respondent no. 2 [victim] before the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SC/ST Act]. The Special Court convicted A-1 under Section 323, Indian Penal Code, 1860 [IPC] and sentenced him to rigorous imprisonment for 3 months together with fine of Rs.1000/- with default term. A-2 was convicted under Sections 354 and 323, IPC as well as Section 3(1)(xi) of the SC/ST Act. For the offences under Section 354, and Section 3(1)(xi) of the SC/ST Act, A-2 was sentenced to a year's rigorous imprisonment each together with fine of Rs.1000/-. For the offence under Section 323, IPC, he was sentenced to rigorous imprisonment for 3 months and fine of Rs.1000/-. The sentences were directed to run concurrently.

[3] Appellants carried the conviction and sentence in appeal before the High Court which, by the aforementioned judgment and order, dismissed the appeal.

[4] In the written complaint lodged by the victim giving rise to the First Information Report [FIR], it was alleged as follows:

"I live in Sawargaon, Amba Ward, Padhurna. I study in class 11. My family consists of my mother, father, dadi and younger brother Pawan. On 04/10/2015 my mother, father and dadi had gone for hawking to Ambada market and around 10:30 at night my brother was in the Ganesh Utsav organized nearby our house. I was at home. Dadu Pendse of my locality came along with his friend Ankit Kevte and enquired from the gate of the house, if any one is there, I came out on which Dadu Pendse asked isn't there any one in the house, to which I replied that my father has gone to the market. On listening to his Ankit Kevta caught hold of my dupatta, I pulled back my dupatta and asked him to leave it, on which he caught hold of my neck with bad intention. I shouted and tried to run away due to which he scratched my neck. My brother Pawan came to save me upon listening my voice, on which both of them gave him beating and abused him. Ankit Kevte belongs to Teli cast and despite knowing that I belong to Schedule Cast (sic, Caste), he teased me, beaten and abused my brother. I have come to lodge the report along with my brother Pawan. I have lodged the report. Action be taken."

[5] Paragraph 2 of the impugned judgment and order records the prosecution's case. We consider it appropriate to reproduce the same hereunder:

"2. The facts necessary for disposal of present appeal, in short, are that on 04.10.2015, the prosecutrix lodged a report that she was in her house and her brother had gone to attend a program of Ganesh Ji. At that time, the appellants came there and inquired as to whether there is anybody in the house or not. When the prosecutrix informed that her father has gone to the market, then the appellant No.2 caught hold of her chunni and with evil intention caught hold of her neck. When she tried to run away, the appellant No.2 scratched her neck. When her brother came running to save her, then he too was also assaulted and he was abused filthily. The police lodged the FIR, arrested the appellants, recorded the statements of the witnesses and after completing the investigation filed the charge-sheet for offence under Sections 354, 294, 323, 34 of IPC and under Section 3 (1) 11 of SC/ST (Prevention of Atrocities) Act."

[6] In her examination-in-chief, the victim (as PW-1) deposed as follows:

"3. The accused Dadu present in the court, came to my house and asked if there was anyone in the house or not, to which I replied that no one is there. Then accused Dadu called someone from his mobile phone and after a while, the boy standing with the accused Dadu, also came to my house. I was standing on the staircase of my house suddenly when the boy standing with the accused Dadu pulled my dupatta. I screamed loudly and my brother Pawan who was 16 years old at the time of incident came to the house. The boy standing with Dadu also injured me on my back through nail marks. As soon as my brother Pawan came to rescue me, he was also beaten up by the both the accused present in the court. He got injuries on his head, hand and chest. Bleeding also oozed from head and chest."

[7] From the written complaint giving rise to the FIR as well as the victim's deposition in court, it is clear that qua the victim, A-1 did not touch the victim. His role is confined to enquiring from the victim as to whether anyone was in her house or not. Insofar as A-2 being called on phone by A-1 is concerned, the version in the written complaint is at variance. Allegedly, A-2 had accompanied A-1. Qua her brother (PW-2), the victim deposed that both the appellants beat him and he received injuries on his head, hand and chest. Blood also oozed from his head and chest. Significantly, the victim did not depose in court that A-2, knowing that she and her brother belonged to Scheduled Caste, teased her and beat and abused him.

[8] The victim's brother (PW-2) stepped into the box and deposed as follows in course of his examination-in-chief:

"2. The incident happened about 2-3 years ago. The incident took place at 8:00-8:15 pm at night when I was at the temple with my friends. My house is

near the temple, I got the information about the fight happening in my house so I ran home and found the accused Dadu alias Ankush who is present in the court and another boy whose name came to be known as Ankit and my sister was there. Both the accused were teasing my sister. Accused Ankit had already pulled my sister's dupatta and there were nail marks on her back. When I intervened, both the accused beat me with their hands and with the wood kept near the stove, due to which I got injured on my nose and mouth and there was bleeding. The accused ran away after assaulting me.

3. There was no one else at my house except my sister. At the time of the incident, many people from the locality had come and had seen the incident. Thereafter I along with my sister reached the Pandhurna police station where she filed a report about the incident. After the report, ... and I were sent to Pandhurna hospital for medical examination and where both of us were medically examined and treated."

[9] The evidence of PW-2 reveals that he was at the Ganesh temple when he got information about a fight happening in his house and, as such, he ran home to find A-1 and A-2 teasing the victim (her sister). From whom PW-2 obtained information is not disclosed. Though not being present at the relevant time, he deposed that A-2 had pulled the dupatta of the victim and scratched her back with nails. Upon intervening, the appellants beat him with a wood (kept near the stove) resulting in PW-2 suffering bleeding injury on his nose and mouth. It is also in his evidence that many people from the locality had come and had seen the incident.

[10] From the evidence on record before the trial court, it is revealed that on the next day of the incident, the victim and PW-2 were examined by the medical officer (PW-5). Insofar as the injuries suffered by them are concerned, PW-5 stated as follows:

"1. ***

1. A scratch mark on the back of the neck with length 4 to 5 cm.
2. The said injury was simple in nature and seemed to have been caused by a hard and blunt object. It was occurred within 4 to 5 hours of testing. The report given by me Exhibit P-6 which bears my signature at point A to A.

3. ***

1. There was a scratch mark on his chest of size about 1 cm X 1/2 cm.
2. A scratch mark above the eyebrow of the left eye, of size about 1 cm in length.
4. According to my opinion, the above-mentioned injuries were simple in nature and seemed to be caused by a hard and blunt object. They were of within 4 to 5 hours of examination. The report given by me Exhibit P-7 bears my signature at point A to A."

[11] In his cross-examination, PW-5 deposed as follows:

"5. It is correct to say that if a person falls or gets dragged on the ground, it is possible to get both the above-mentioned injuries in such a situation."

[12] Having considered the evidence led by the prosecution, there appears to be a discrepancy as to whether A-2 accompanied A-1 when A-1 came to the house of the victim and enquired about the availability of her family members.

[13] While the FIR version is that the A-2 had accompanied A-1, in court, she deposed that A1 had called A2 on phone whereafter he arrived. This discrepancy, however, may not be too material for the purpose of a decision on this appeal because of other more glaring discrepancies which we propose to highlight now.

[14] However, what has struck us is the deposition of PW-2 that many people from the locality had come and seen the incident. Not only did PW-2 not name any person from the locality who had seen the incident, not a single witness from the locality was examined who had seen the incident. No post-occurrence witness, having heard of the incident, was also examined.

[15] That apart, the evidence of PW-5 does suggest that the injuries which were suffered by both the victim and PW-2 could have been possible if someone falls or gets dragged on the ground. It is also noteworthy that the injuries found on the person of both the victim and PW-2 were simple injuries which, according to PW-5, seem to have been caused by a hard and blunt object. PW-2 had referred to a wood by which he was struck by the appellants but such wood was not recovered and exhibited.

[16] Although the victim had deposed of being injured by A2 on her back through nail mark, the same (nail mark) does not find mention in the deposition of PW-5. It is also noteworthy that while PW-2 deposed that he was injured on his nose and mouth and there was bleeding, no injury on the nose and mouth appear to have been found by PW5. That PW-2 suffered injury on his nose and mouth is belied by the deposition of the victim, who deposed that PW-2 was bleeding from the head and chest.

[17] It is in the evidence of the victim that when A-2 pulled her dupatta, she screamed loudly prompting PW-2 to rush to the house. PW-2, however, did not say that he rushed to the house on hearing the victim's scream. He said, someone had informed him of a fight in his house. If the statement of the victim is contrasted with the statement of PW-2, we find it improbable that victim's loud screams could only reach the ears of PW-2 and no one else's considering that a large number of members of the public were present for the Ganesh Puja celebrations (as per the version of PW-2 himself).

[18] At this stage, it is also apposite to highlight that as per PW-2, many people from the locality had come and seen the incident, hence, it would appear strange that none from the locality was produced in the court as a prosecution witness. While it is within the realm of possibility, the fact that no member of the public rushed to rescue the victim when she was being teased by the appellants is also a circumstance to find the testimony of PW-2 unbelievable. We have, therefore, come to the ineluctable conclusion that PW-2 has not been truthful.

[19] It is also important to note the deposition of PW-4. Though related to the victim and PW-2, he deposed that the pandal of Ganesh Puja was overcrowded and peoples' feet were touching each other due to which PW-2 felt that A-1 and A-2 had stepped on PW-2's feet. This resulted in a scuffle breaking out between A-1 and A-2 on the one hand and PW-2 on the other. Though PW-4 was declared hostile after he made the above statement, he was subjected to cross-examination by the Public Prosecutor. Notably, it is in his evidence that it was wrong to suggest that PW-2 was assaulted by A-1 and A-2. The High Court did not refer to the evidence of PW-4 simply on the ground that he had turned hostile, in ignorance of the law relating to appreciation of the evidence of a witness who has been declared hostile. A profitable reference may be made to the decision of this Court in **State of U.P. v. Ramesh Prasad Misra**, 1996 10 SCC 360 wherein it was held that it is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. The mere rejection of the evidence of PW4 in the manner aforesaid is contrary to the law laid down by this Court.

[20] The High Court further observed that from the statements of the appellants recorded under Section 313 Cr. PC, it was clear that they knew PW-1 belonging to Scheduled Caste. An abrupt finding was recorded that "it is clear that the offence was committed by the appellants simply for reason that the complainant was belonging to scheduled caste." Curiously, there appears to be no statement in court in course of trial by the victim that A-2 committed the alleged offence only because of the victim being a member of Scheduled Caste. No such statement was even made by PW-2. The finding returned by the High Court is, thus, perverse.

[21] In our view, the defence has been successful in placing a probable and believable account of a scuffle having broken out between PW-2 and the appellants at the Ganesh Puja pandal, which might have prompted PW-2 to set up a false story of commission of offence on the victim. Such scuffle could have resulted in PW-2 falling on the ground and suffering injuries which were ultimately found on his person by PW-5.

[22] Insofar as the victim is concerned, as noted above, she has not attributed any offensive act to A-1. Her version of A-2 pulling her dupatta and the appellants beating PW-2 also do not inspire confidence, in view of the aforesaid discussions. What remains is the scratch on the back of her neck. We do not see reason to hold, in view of the evidence of PW-5 and our above findings, that A-2 ought to be held guilty of an offence under Section 323, IPC.

[23] The conviction and sentence of the appellants being indefensible, stand set aside. They are set free and discharged from their bail bonds.

[24] The appeal, thus, stands allowed

2026(1)MBAJ30

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

(Hon'ble Judge: Sanjay Karol; Nongmeikapam Kotiswar Singh)

Criminal Appeal No. 5229 of 2025 **dated 04/12/2025***Neeraj Kumar @ Neeraj Yadav***Versus***State of U P & Ors***ADDITIONAL ACCUSED SUMMONING**

Indian Penal Code, 1860 Sec. 316, Sec. 302, Sec. 307 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 319 - Additional Accused Summoning - Appeal concerned rejection of prosecution's plea to summon additional accused under Section 319 CrPC - Deceased had given statements under Section 161 CrPC naming her husband and relatives who instigated him to shoot her - Daughter and brother of deceased corroborated allegations - Trial Court and High Court refused summoning holding evidence insufficient - Court explained that Section 319 empowers summoning based on strong and cogent evidence during trial - Found that testimonies of witnesses and deceased's statements disclosed prima facie role of respondents - Held that lower courts applied incorrect standard by insisting on conclusive proof - Ordered summoning of private respondents as additional accused to ensure fair trial and prevent offenders escaping prosecution - Appeal Allowed

Law Point: Power under Section 319 CrPC is discretionary yet must be exercised when credible evidence during trial reveals complicity-Requirement is higher than prima facie satisfaction but short of proof for conviction.

Acts Referred:

Indian Penal Code, 1860 Sec. 316, Sec. 302, Sec. 307

Code of Criminal Procedure, 1973 Sec. 161, Sec. 319

Counsel:

Shivam Sharma, Utkarsh Bhushan, Abhishek Vikas, Dr Vijendra Singh, Apurva Singh, Aniket Tiwari, Dhruv Josh

JUDGEMENT**Sanjay Karol J.- [1]** Leave Granted.

[2] The present appeal arises out of the impugned judgment and order dated 22nd April 2024 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 4729 of 2023, which affirmed the order dated 3rd August 2023 passed by the Court of Additional District and Sessions Judge, Bulandshahar [Hereinafter referred to

as the 'Trial Court'] whereby the application filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 [Hereinafter referred to as 'CrPC'], praying for summoning additional accused (Respondent Nos.2 to 4 herein) [Collectively referred to as 'the respondents'] in Sessions Trial No.1151 of 2021 arising out of Case Crime No.187 of 2021, was dismissed.

[3] The facts in brief, shorn of unnecessary details, are as under:

3.1. On 25th March 2021, the appellant Neeraj Kumar lodged FIR No. 187 of 2021 at PS Sikandrabad under Section 307 of the Indian Penal Code, 1860 [Hereinafter referred to as 'IPC'] alleging that his sister Smt. Nishi [Hereinafter referred to as 'the deceased'.] had been shot by her husband, Rahul, at her matrimonial home. The said FIR was registered based on the information received by him from his niece Shristi, aged about nine years, who informed the appellant that 'Papa has shot Mummy at home'.

3.2. The deceased was first taken to Government Hospital, Bulandshahar, and thereafter to Kailash Hospital, Noida, where she underwent treatment for the firearm injury sustained by her. During the course of treatment, her statements were recorded under Section 161 CrPC on two occasions - firstly on 25th March 2021 and then again on 18th April 2021. In her first statement, she named her husband Rahul as the person who shot her; in the subsequent one, she further alleged that he had done so at the instigation of his mother Rajo @Rajwati (Respondent No.2 herein), brother Satan @Vineet (Respondent No.3 herein) and brother-in-law Gabbar (Respondent No.4 herein). Both the statements were video recorded.

3.3. On 15th May 2021, the deceased succumbed to the injuries sustained. Following her death, the appellant, on 20th May 2021, made another complaint before the SHO PS Sikandrabad, requesting that appropriate legal action be taken against the respondents (relatives of the husband), since the deceased had categorically named them and mentioned their role in the statement(s) recorded by the police.

3.4. Upon completion of the investigation, a chargesheet was filed on 16th July 2021 only against Rahul, the husband of the deceased, under Sections 302 and 316 IPC, while exonerating the private respondents herein.

3.5. The case thereafter proceeded to trial before the concerned Court. The charges were framed on 18th October 2021 and the appellant was examined as PW-1 on 28th March 2022 and he deposed about the incident and the events immediately following it. The minor daughter of the deceased, Shristi, was examined as PW-2 on 12th July 2022. In her testimony, she narrated the circumstances surrounding the said incident, stating that her father had shot her mother at the instigation of the private respondents herein.

3.6. On the strength of these testimonies and the statements of the deceased recorded under Section 161 CrPC, the prosecution moved an application under Section 319 CrPC, praying for summoning the private respondents as additional accused to

face trial along with the husband of the deceased. It was contended that the evidence recorded during the trial clearly disclosed their role in the commission of the offence.

3.7. The Trial Court, vide its order dated 3rd August 2023 dismissed the said application, holding that the material on record was insufficient or was not of such strength and cogency to exercise the extraordinary power provided under Section 319 CrPC.

3.8. Aggrieved by the said order, the appellant preferred Criminal Revision No.4729 of 2023 before the High Court, which was dismissed vide the impugned judgment for the following reasons:

(i) The statements of the deceased dated 25th March 2021 and 18th April 2021 recorded before her death could not be treated as dying declarations under Section 32 of the Indian Evidence Act 1872 [Hereinafter referred to as 'Evidence Act'] since her death had occurred on 15th May 2021, after the expiry of a substantial period from the date of recording such statements.

(ii) The statement of PW-1, the informant/brother of the deceased, was held to be of limited evidentiary value with respect to the actual occurrence, as he was not an eyewitness to the incident.

(iii) The testimony of PW-2, the minor daughter of the deceased, was also not sufficient to summon the respondents, since she had admitted in her cross-examination that she reached the place of occurrence only after hearing the sound of two gunshots, thereby indicating that she was also not an eyewitness to the said incident.

Relying on the above, the High Court concluded that no strong and cogent evidence emerged justifying exercise of power under Section 319 CrPC and accordingly affirmed the order passed by the Trial Court.

3.9. It is against this judgment of the High Court that the appellant is before us.

[4] We have heard the learned counsel for the parties and perused the material on record. The sole issue that arises for our consideration is whether the Courts below, in the attending facts and circumstances, were justified in dismissing the application for summoning the respondents as additional accused?

[5] Section 319 CrPC contemplates that:

"(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. ..."

[6] The law governing the summoning of an additional accused under Section 319 CrPC is now well settled. The provision is an enabling one, empowering the Court, during the course of an inquiry or trial, to proceed against any person not already arraigned as an accused, if, from the evidence adduced before it, such person appears to have committed an offence. Its object is to ensure that no guilty person escapes the

process of law, thereby giving effect to the maxim *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted). It casts a duty upon the Court to ensure that the real offender does not go unpunished, for only then can the concept of fair and complete trial be realised.

[7] It is no longer *res integra* that the power conferred under this Section is extraordinary and discretionary in nature, intended to be exercised sparingly and with due circumspection. While invoking it, the Court must be satisfied that the evidence appearing against the person sought to be summoned is such that it *prima facie* necessitates bringing such person to face trial. The degree of satisfaction required is higher than that warranted at the stage of framing of charge, yet short of the satisfaction necessary to record a conviction. Such satisfaction must rest on cogent and credible material brought on record during the trial, and not based on conjectures or speculations. In this regard, reference to a few judicial pronouncements of this Court would be apposite.

7.1. The Constitution Bench of this Court in **Hardeep Singh v. State of Punjab**, 2014 3 SCC 92 extensively discussed the power conferred under Section 319 CrPC. Relevant part is extracted hereunder:

"90. ... all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it *prima facie* necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

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106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. ...

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110. In Lal Suraj [**Lal Suraj v. State of Jharkhand**, 2009 2 SCC 696: (2009) 1 SCC (Cri) 844] , a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been chargesheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in Lok Ram [**Lok Ram v. Nihal Singh**, 2006 10 SCC 192: (2006) 3 SCC (Cri) 532: AIR 2006 SC 1892] , wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

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117.6. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial..."

(emphasis supplied)

7.2. In **S. Mohammed Ispahani v. Yogendra Chandak**, 2017 16 SCC 226, it reiterated that under this Section the Court possesses the power to summon the persons not named in the chargesheet to face trial, if the evidence on record so warrants. It further clarified that a statement recorded under Section 161 CrPC, though not an independent piece of evidence, sufficient in itself to invoke the power under this Section may, nevertheless, be relied upon for corroborative purposes when supported by evidence emerging during trial. It was observed as under:

"34. ... No doubt, at one place the Constitution Bench observed in Hardeep Singh case [**Hardeep Singh v. State of Punjab**, 2014 3 SCC 92: (2014) 2 SCC (Cri) 86] that the word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. In para 105 of the judgment, however, it is observed that "only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner". This sentence gives an impression that only that evidence which has been led before the Court is to be seen and not the evidence which was collected at the

stage of inquiry. However there is no contradiction between the two observations as the Court also clarified that the "evidence", on the basis of which an accused is to be summoned to face the trial in an ongoing case, has to be the material that is brought before the Court during trial. The material/evidence collected by the investigating officer at the stage of inquiry can only be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 CrPC.

35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the chargesheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the chargesheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the chargesheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

(emphasis supplied)

7.3. In **Omi v. State of M.P.**, 2025 2 SCC 621, a coordinate bench of this Court laid the following principles of law with regard to Section 319 CrPC:

"19. The principles of law as regards Section 319CrPC may be summarised as under:

19.1. On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

19.2. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the chargesheet or the case diary do not constitute evidence.

19.3. The power of the court under Section 319CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its

operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the chargesheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

(emphasis supplied)

7.4. Recently, this Court, through one of us (Sanjay Karol, J.), in *Shiv Baran v. State of U.P.*, 2025 SCCOnLineSC 1457 summarised the principles that the Court ought to keep in mind while considering an application under this Section. It was observed:

"15. The principles that the Trial Court ought to follow while exercising power under this Section are:

(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;

(b) It is the duty cast upon the Court not to let the guilty get away unpunished;

(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;

(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculcates him;

(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;

(f) The degree of satisfaction required is much stricter than the prima facie case, which is needed at the time of framing of charge(s);

(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person could be tried' and not 'should be tried'.

(emphasis supplied)

[8] Keeping in view the principles delineated above, let us now examine whether the Courts below have applied the correct standard while declining the prosecution's prayer to summon the respondents as additional accused. As is evident from record, the prosecution has relied primarily on three facets of evidence: (i) the testimony of PW-1, the informant and brother of the deceased;

(ii) the testimony of PW-2, the minor daughter of the deceased, along with her statement recorded during investigation; and (iii) the statements of the deceased herself recorded under Section 161 CrPC. We may consider each in turn.

[9] The statement of PW-1, the appellant and informant, when read in its entirety, clearly attributes specific roles to each of the respondents. The relevant extract of the statement reads as under:

"... Due to three daughters of my sister, her Dewar- Satan, Husband- Rahul, SasRajwati, Nandoi- Gabbar used to harass my sister Nishi. When my sister- Nishi, became pregnant fourth time, sex determination test of child in her ovary was got done by Dewar- Satan, HusbandRahul, Sas- Rajvanti, Nandoi- Gabber. In said test, it had appeared that, this time also in her ovary is female child. Then her Dewar- Sattan, HusbandRahul, Sas- Rajwati, Nandoi- Gabbar mounted pressure over her for getting abortion. In this context, my sister had told me telephonically. She had also told that, she is willing to give birth to her female child. On the date of 25.3.21 at about 9.30 a.m. my niece[sister's daughter] namely- Shristi telephonically informed me that, on instigation of uncle- Satan, grandmother- Rajwati and Fufa - Gabbar, Papa opened fire upon mummy. At this information, with members of my family, I proceeded for matrimonial home of my sister- Nishi. In route, we got information that; Nishi is brought to Rana Hospital at Buland Shahar. ..."

A perusal of his statement indicates that, allegedly, the deceased, his sister, was continuously harassed by the respondents for having given birth to three daughters, and that upon her subsequent pregnancy, they compelled her to undergo a sex determination test. When it was found that she was carrying a female foetus, they pressured her to terminate her pregnancy. It is further deposed that his niece (PW-2), an eyewitness to the occurrence, telephonically informed him that her father had shot the deceased and that the respondents had provoked him to commit the said act. His statement, therefore, prima facie indicates active participation and instigation on the part of the respondents in the commission of the offence.

[10] While it is true that the appellant did not specifically mention in the FIR that the husband of the deceased had fired at the instigation of the respondents, as conveyed by his niece, however, it is trite law that an FIR is not an encyclopaedia that must contain every minute detail of the incident, since its primary purpose is to set criminal law in motion. [See: **CBI v. Tapan Kumar Singh**, 2003 6 SCC 175 and **Amish Devgan v. Union of India**, 2021 1 SCC 1] Therefore, at this stage, his deposition cannot be construed as an embellished or improved one simply because of

the absence of certain particulars in the FIR, particularly when his testimony is consistent with the overall narrative. Moreover, the representation dated 20th May 2021, made before the SHO, wherein he categorically named the respondents, further corroborates his testimony.

[11] The deposition of PW-2, Shristi, the minor daughter of the deceased, prima facie has considerable evidentiary value, given the fact that she is allegedly an eyewitness to the occurrence. She narrated the events of the fateful day in the following terms:

"Mummy had asked to Papa for bringing tea leaves and sugar. But Papa did not bring tea leaves and sugar. Meantime my grandmother came and she asked my mother to consume some pill (contraceptives), but my mummy refused to take the same. So, my grandmother complained to my Papa in this regard. Then my Fufa-Gabbar and Uncle- Satan said that, she gives birth of only female child. So, kill her. Hearing this, Papa opened fire upon my mummy twice. Receiving fire arms/gun shot injuries, my mummy fell down in her room. Then my uncle and Fufa tried to find out that, whether my mummy is dead or not? After examining they said, she still alive. So, kill her. At this, Papa this time opened fire and shot three more times, from his country made pistol. At this, I suggested mummy to go house of Baba. At this, Mummy reached to house of my Baba. He was at his home. He carried away my mummy to Hospital. My uncle had given to my Papa the said gun. My Papa had opened fire and shot every time before me. Said occurrence is of morning. Name of my grandmother is Rajo."

(emphasis supplied)

From reading the above, it is evident that a quarrel took place between her parents. During this altercation, her father, Rahul Yadav, obtained a country made pistol from her uncle Sattan @Vineet (Respondent No.3 herein) and, on the provocation of her grandmother Rajo @Rajwati (Respondent No.2 herein) and her aunt's husband Gabbar (Respondent No.4 herein), fired at her mother/deceased. The High Court, however, in the impugned judgment, concluded that PW-2 was not an eyewitness to the actual firing and relied on her cross-examination wherein she stated "I had heard the sound of firing. From sound of firing I came to know that, that two times firing was made. I had seen empty cartridge on ground." to hold that she had reached the scene of occurrence only after hearing the gunshots. In our considered view, the High Court's approach is erroneous. Drawing such an inference amounts to conducting a mini-trial at the stage of summoning, which is impermissible. At the stage of deciding the application under Section 319 CrPC, the Court is not required to test the credibility or weigh the probative value of the evidence as would be done at the end of the trial for determining the conviction or otherwise of the accused. What the Court has to consider at this stage is whether the material on record reasonably indicates involvement of the proposed accused so as to exercise the extraordinary power. Therefore, the reliance placed by

the Courts below on PW-2's cross-examination to discredit her testimony was misplaced.

[12] The respondents have further contended that PW-2 did not initially name the respondents in her statement recorded during the investigation and that, being a minor, she may have been influenced or tutored to implicate the respondents, as she was residing with the appellant's family following the incident. However, we are not persuaded to accept this contention, as even in her statement recorded under Section 161, had categorically named the respondents as those who instigated the commission of the said crime. She stated:

"Q.No.12: What happened to your mother and whether father did something to her?

Ans: First Papa went out outside then return back, mother asked him to bring Tea Leaves and Sugar and later on asked him to bring chilli but he did not brought any of the item mother started preparing kitchen after little quarrel. In the meantime, Grand Mother came in and asked my mother to take pills to which she refused. Then Grand Mother went and called father, Rahul, Uncle-Gabbar, Satan Uncle.

Q.13.: What happened next?

Ans: Grand mother told if she wont take pills then she should take bullets now kill her. Uncle gave the pistol.

Q.14: What happened next?

Ans: Then papa fire two bullets and went away, Mummy got up and went inside the room, then Satan Uncle and Gabbar Uncle went inside to check and told she still alive go and finish her then Papa again shot 3 more bullets

Q.15: Where your father go?

Ans: He went outside and I do not know where.

...

Q.20: At the time of incident, who else where there at the time when your father shot your mother?

Ans: Fufa, Uncle and Grand Mother

Q. 21: Who amongst you were there?

Ans: We all were there (Three Sisters)"

(emphasis supplied)

While a statement recorded under Section 161 CrPC is not substantive evidence in itself, it may be used to corroborate the evidence recorded by the Court to invoke the power under Section 319 CrPC, as held in **S. Mohammed Ispahani** (supra). Therefore, conjointly reading PW-2's deposition along with her Section 161 statement, we find that a specific and overt act has been assigned to the respondents. Whether she actually witnessed the firing or arrived immediately thereafter, and the extent to which

her statement inspires confidence, are matters that are to be determined at the stage of trial, upon full appreciation of the evidence. The testimony of a child witness shall be weighed by the Court concerned in view of the principles in laid in **State of Rajasthan v. Chatra**, 2025 8 SCC 613 and **State of M.P. v. Balveer Singh**, 2025 8 SCC 545.

[13] Lastly, the prosecution has also placed reliance upon the statements of the deceased recorded during the investigation under Section 161 CrPC to seek the summoning of the respondents. However, the respondents have contended that such statements cannot be relied upon as, firstly, they were neither recorded in the presence of a Magistrate nor accompanied by any contemporaneous medical certification regarding the mental fitness of the deceased to give such statements; and secondly, both statements are inconsistent inter se, since the first one does not name the respondents whereas the second does.

[14] We find these contentions bereft of any merit. We say so because it is a well-established position of law that a statement made by a deceased person, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and recorded under Section 161 CrPC, shall be relevant and admissible under Section 32(1) of the Evidence Act, notwithstanding the express bar provided in Section 162 CrPC. Such a statement, upon the death of the declarant, assumes the character of a dying declaration. It is also equally settled that a dying declaration need not necessarily be recorded in the presence of a Magistrate, and that the lack of a doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. This position has been recently reiterated by this Court in **Dharmendra Kumar v. State of M.P.**, 2024 8 SCC 60 wherein it was held:

"65. Section 161CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1)CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub-section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given

to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon...

66. As regards the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence. [**Koli Chunilal Savji v. State of Gujarat**, 1999 9 SCC 562; 2000 SCC (Cri) 432]" [See also: **Laxman v. State of Maharashtra**, 2002 6 SCC 710; **Bhagwan v. State of U.P.**, 2013 12 SCC 137; **Jagbir Singh v. State (NCT of Delhi)**, 2019 8 SCC 779; **Pradeep Bisoi v. State of Odisha**, 2019 11 SCC 500; and **Manjunath v. State of Karnataka**, 2023 SCCOnLineSC 1421]

[15] Coming to the instant case, the two statements of the deceased, dated 25th March 2021 and 18th April 2021, clearly fall within the ambit of Section 32(1) of the Evidence Act. For convenience, the relevant portions of both these statements are extracted below:

First statement dated 25th March 2021:

"Statement of Victim On asking, Mrs Nishi W/o- Rahul ... told that, Sir, I have three daughters. On this issue often my husband used to quarrel with me. But when today my husband quarrelled with me, firstly he asked to our children to go out, but my elder daughter Shrishti remained there and in her presence, my husband opened fire upon me with country made pistol. Thereafter I got dizziness. ..."

Second statement dated 18th April 2021:

"What happened in occurrence? What all thing was done? Answer- I was shot by firearm By whom? By my husband, I was shot on instigation by one of my Nandoi (Brother-in-law of husband), my [Saas] mother-in-law and Dewar [Brother-in-law] under their conspiracy. What is name of your Nandoi? His name is Gabbar. ... What was said by your Dewar? My Dewar had me threatened me. Earlier, we used to reside with him. My Dewar said to me that, he will get send me home, then he will get me killed. What did your Mother-in-Law say? My mother-inlaw said to me that, I shall not permit to live in my house and you cannot live in my house and I will get you killed My Nandoi said one plot is in your name also. He instigated my husband to open fire upon me. i.e. when your

husband opened fire upon you, your Nandoi was present on spot. Yes sir. They had tried to hang me also. i.e. they done everything for committing my murder. ... My mother-in-law had given me threat of getting my murder done and My Dewar also had given me threat of getting my murder. ... My mother-in-law had given me threat of getting my murder done and My Dewar also had given me threat of getting my murder. Who had brought you to hospital? Sir, I was unconscious. So, I do not about it."

A perusal of both these statements reveals that while the former primarily narrates the incident, the latter elaborates on the circumstances that culminated in the fatal act and brings forth the complicity of the respondents. The mere omission of their names in the first statement, or the lack of the Magistrate's presence or medical certification, does not undermine the relevance of these statements. Any inconsistencies between them, as well as their evidentiary value, reliability, and the weight to be attached to them are, again, matters which are to be examined at trial and not at the preliminary stage of summoning.

[16] Additionally, in our considered view, the High Court erred in holding that these statements cannot be treated as dying declaration(s) merely because the death of the deceased occurred after a substantial lapse of time from their recordings. Such an approach is clearly untenable since the law does not require that a declarant, at the time of making the statement, to be under the shadow of death or the expectation that death is imminent. Here the time gap between the incident and the death is less than 2 months. In any event, Section 32 of the Evidence Act, contains no such limitation. What is pertinent is that the statement relates either to the cause of death or the circumstances leading to it. [See: **Rattan Singh v. State of H.P.**, 1997 4 SCC 161; **Kulwant Singh v. State of Punjab**, 2004 9 SCC 257; and **Amar Singh v. State of Rajasthan**, 2010 9 SCC 64]

[17] Consequent to the above discussion, we find that the material on record, i.e. the depositions of PW-1 and PW-2, along with the statements of the deceased recorded during the investigation, prima facie suggests the complicity of the respondents in the commission of the said offence. There, thus, exists sufficient ground to exercise the power under Section 319 CrPC and summon them to face trial in Sessions Trial No.1151 of 2021. The objections raised by the respondents, including the alleged tutoring of the minor witness, omission of their names in the FIR, inconsistencies in the statements of the deceased and lack of contemporaneous medical certification, are all premature and cannot be conclusively decided at the stage of exercising power under Section 319 CrPC.

[18] We clarify that all the observations made herein are only for the purpose of deciding the application under Section 319 CrPC to summon the respondents as additional accused and should not be construed as remarks on the merits of the matter.

[19] Therefore, the appeal is accordingly allowed. The impugned judgment and order of the High Court, as referred to in Paragraph 2, is set aside. Parties are directed

to appear before the Trial Court on 08th January 2026. We direct them to fully cooperate and not take any unnecessary adjournments. The trial is expedited.

Pending application(s), if any, shall stand disposed of

2026(1)MBAJ43

IN THE SUPREME COURT OF INDIA

(Hon'ble Judge: Dipankar Datta; Augustine George Masih)

Criminal Appeal; S L P (Crl) (Special Leave Petition (Crl)) No of 2025; 13737 of
2025 dated 03/12/2025

Mahesh Joshi

Versus

Directorate of Enforcement

BAIL UNDER PMLA

Constitution of India Art. 21 - Code of Criminal Procedure, 1973 Sec. 207 - Prevention of Money-Laundering Act, 2002 Sec. 45 - Bail under PMLA - Appellant, former Minister, sought bail in money laundering case - Accused not named initially and added later - Co-accused granted bail - Alleged amount within threshold under Sec.45(1) proviso - Case entirely documentary and trial not likely soon - Appellant aged and cooperated - Court noted constitutional courts must ensure liberty under Article 21 where trial unlikely to conclude early - No recovery pending and material already collected - Held further detention unnecessary - Bail granted with conditions including surrender of passport and cooperation with trial - No opinion on merits expressed - Bail Granted

Law Point: Where trial under PMLA unlikely to commence soon and evidence is documentary, prolonged pre-trial detention violates Article 21; constitutional courts may grant bail notwithstanding statutory rigour of Section 45.

Acts Referred:

Constitution of India Art. 21

Code of Criminal Procedure, 1973 Sec. 207

Prevention of Money-Laundering Act, 2002 Sec. 45

Counsel:

Suryaprakash V Raju

JUDGEMENT

Augustine George Masih, J.- [1] Leave granted.

[2] The present appeal seeks the grant of regular bail to the Appellant in connection with ECIR No. JPZO/29/2023 dated 21.08.2023, registered by the

Directorate of Enforcement under the Prevention of Money-Laundering Act, 2002 (for short, "PMLA").

[3] The Appellant, Mahesh Joshi, served as Minister, Public Health and Engineering Department (PHED), Government of Rajasthan. He was arrested on 24.04.2025. His bail applications were rejected by the Trial Court and subsequently by the High Court on 26.08.2025. The Appellant has therefore approached this Court seeking relief.

[4] We have heard Mr. Sidharth Luthra, learned senior counsel appearing on behalf of the Appellant, and Mr. Suryaprakash V. Raju, learned Additional Solicitor General appearing on behalf of the Respondent - Directorate of Enforcement.

[5] The proceedings arise from allegations concerning forged IRCON certificates used in PHED tenders in 2022-2023. This led to multiple FIRs by the Anti-Corruption Bureau, departmental inquiries, suspension of officials, and blacklisting of firms during the Appellant's tenure as Minister. The Appellant was not named in the original FIRs or the initial ECIR and was arrayed as an accused only upon filing of a later supplementary complaint. Since this order is confined to bail, we do not comment on the correctness of the allegations or the material.

[6] Learned senior counsel for the Appellant submits that four co-accused, namely, Peeyush Jain, Sanjay Badaya, Padam Chand Jain, and Mahesh Mittal, have already been granted bail either by this Court or the High Court and that the Appellant stands on at least the same footing, thereby attracting parity.

[7] It is submitted that even proceeding on the allegations as they stand, the amount directly attributed to the Appellant does not exceed ₹50 lakh, attracting the proviso to Section 45(1) of the PMLA. The High Court, while declining bail, did not assign any reasons for the nonapplication of the proviso.

[8] Learned senior counsel further submits that during his tenure as Minister, the Appellant himself took departmental action by suspending officials, blacklisting firms and causing registration of FIRs relating to forged certificates. These steps negate any inference of personal benefit.

[9] The Appellant is 71 years old, has deep roots in society, and has cooperated throughout the investigation. He availed interim bail on two occasions and surrendered punctually, without any allegation of misuse.

[10] Furthermore, attention is drawn to the documentary nature of the case, wherein large number of pages, witnesses and documents are cited by the prosecution, and that the matter remains at the stage of supply of copy of the police report and other documents under Section 207, Code of Criminal Procedure (for short, "CrPC"). It is urged that the trial is unlikely to commence in the near future, and prolonged incarceration would be inconsistent with Article 21 of the Constitution of India.

[11] On the contrary, the learned ASG submits that the allegations relate to serious economic offences. He refers to what the agency describes as a financial trail involving movement of funds through M/s Mugdog Packaging India LLP, M/s

Maxclenz Retail Pvt. Ltd., and M/s Jay The Victory, before reaching the firm of the Appellant's son, M/s Sumangalam LLP. According to the respondent, the layering of transactions is consistent with moneylaundering methods.

[12] Reliance is placed on statements of certain coaccused recorded during the investigation, with the submission that the later retractions are belated. It is contended that the ₹50 lakh entry is not isolated and forms part of a larger financial pattern which, according to the agency, totals ₹2.01 crore. The learned ASG submits that the Appellant, being a senior political figure, may influence witnesses who were departmental officials or contractors. Continued custody is therefore sought.

[13] In *V. Senthil Balaji v. Deputy Director, Directorate of Enforcement*, 2024 SCC OnLine SC 2626 of which, one of us was a member (Augustine George Masih, J.), this Court, particularly in para 27, held that where a trial cannot be reasonably concluded and incarceration becomes prolonged, constitutional courts must intervene to safeguard the right to personal liberty under Article 21. The Court further emphasised that Section 45(1)(ii) of the PMLA cannot be interpreted to justify indefinite detention in cases involving voluminous, document-heavy material where trial is unlikely to begin promptly. The present case, in our view, stands on a similar footing. Para 27 of *V. Senthil Balaji (supra)* reads as follows:

"27. Under the Statutes like PMLA, the minimum sentence is three years, and the maximum is seven years. The minimum sentence is higher when the scheduled offence is under the NDPS Act. When the trial of the complaint under PMLA is likely to prolong beyond reasonable limits, the Constitutional Courts will have to consider exercising their powers to grant bail. The reason is that Section 45(1)(ii) does not confer power on the State to detain an accused for an unreasonably long time, especially when there is no possibility of trial concluding within a reasonable time. What a reasonable time is will depend on the provisions under which the accused is being tried and other factors. One of the most relevant factor is the duration of the minimum and maximum sentence for the offence. Another important consideration is the higher threshold or stringent conditions which a statute provides for the grant of bail. Even an outer limit provided by the relevant law for the completion of the trial, if any, is also a factor to be considered. The extraordinary powers, as held in the case of *K.A. Najeeb*, 2021 3 SCC 713, can only be exercised by the Constitutional Courts. The Judges of the Constitutional Courts have vast experience. Based on the facts on record, if the Judges conclude that there is no possibility of a trial concluding in a reasonable time, the power of granting bail can always be exercised by the Constitutional Courts on the grounds of violation of Part III of the Constitution of India notwithstanding the statutory provisions. The Constitutional Courts can always exercise its jurisdiction under Article 32 or Article 226, as the case may be. The Constitutional Courts have to bear in mind while dealing with the cases under the PMLA that,

except in a few exceptional cases, the maximum sentence can be of seven years. The Constitutional Courts cannot allow provisions like Section 45(1)(ii) to become instruments in the hands of the ED to continue incarceration for a long time when there is no possibility of a trial of the scheduled offence and the PMLA offence concluding within a reasonable time. If the Constitutional Courts do not exercise their jurisdiction in such cases, the rights of the undertrials under Article 21 of the Constitution of India will be defeated. In a given case, if an undue delay in the disposal of the trial of scheduled offences or disposal of trial under the PMLA can be substantially attributed to the accused, the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs. An exception will also be in a case where, considering the antecedents of the accused, there is every possibility of the accused becoming a real threat to society if enlarged on bail. The jurisdiction to issue prerogative writs is always discretionary."

[14] Upon considering the material placed before us, we find that several co-accused, whose alleged roles will ultimately be evaluated at trial, have already been granted bail. The Appellant has remained in custody for over seven months. The record is entirely documentary, as of now there are 66 witnesses, 184 documents, and more than 14,600 pages are involved, and the proceedings are still at the stage of supply of copy of the police report and other documents under Section 207, CrPC. In our view, these circumstances indicate that the commencement of trial is not imminent and that the trial itself is not likely to conclude once started in the near future. The continued detention of the Appellant requires closer scrutiny in light of constitutional considerations.

[15] Having regard to the Appellant's age, his earlier conduct while he availed the benefit of the interim bail, and the nature of the material, which is entirely documentary and already in the possession of the investigating agency, we are of the view that the concerns expressed by the respondent can be addressed through imposition of appropriate conditions. At this stage, continued detention does not appear necessary for the purpose of investigation or the conduct of the trial, as no further recovery is expected.

[16] We clarify that nothing in this order shall be construed as an expression on the merits of the case. All observations herein are confined solely to the question of bail. The Trial Court shall consider the material independently and uninfluenced by this order.

[17] In view of the above, we are of the opinion that the Appellant deserves to be released on bail.

[18] The Appellant shall be released on bail in connection with ECIR No. JPZO/29/2023 dated 21.08.2023, upon such terms and conditions as may be imposed by the Special Court including the conditions that the Appellant shall:

- (a) Surrender his passport to the Special Court under the PMLA;
 - (b) Not leave India without prior permission of the Special Court under the PMLA;
 - (c) Regularly and punctually remain present before the Special Court and shall cooperate with the Court for early disposal of case.
- [19] The appeal is allowed on the above terms.
[20] Pending applications, if any, stand disposed of

2026(1)MBAJ47

IN THE SUPREME COURT OF INDIA

[From PATNA HIGH COURT]

(Hon'ble Judge: Sanjay Karol; Nongmeikapam Kotiswar Singh)

Criminal Appeal No 5137 of 2025, 5138 of 2025 **dated 01/12/2025**

Chandan Pasi & Ors

Versus

State of The Bihar

FAIR TRIAL COMPLIANCE

Indian Penal Code, 1860 Sec. 34 - Sec. 302 - Sec. 323 - Sec. 448 - Code of Criminal Procedure, 1973 Sec. 374 - Sec. 313 - Fair Trial Compliance - Appeals filed against conviction for murder - Accused contended that opportunity under Section 313 CrPC not properly given - Court reiterated importance of Section 313 ensuring dialogue between Court and accused for fair trial - Held that omission to put incriminating circumstances to accused causes prejudice and affects fairness of trial - Examined record and found questions not comprehensive to meet statutory requirement - Conviction vitiated due to noncompliance - Matter remitted for retrial from stage of Section 313 CrPC - Appeals Allowed

Law Point: Examination of accused under Section 313 CrPC not a mere formality; failure to confront accused with material circumstances amounts to violation of fair trial principles and vitiates conviction.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 302, Sec. 323, Sec. 448

Code of Criminal Procedure, 1973 Sec. 374, Sec. 313

JUDGEMENT

[1] Leave granted.

[2] The present appeals arise from the final judgments and orders dated 4th September, 2024 and 26th September, 2024 passed by the High Court of Judicature at

Patna in Criminal Appeal (DB) No.443 of 2017, which affirmed the judgment of conviction dated 27th March 2017 and the order of sentence dated 29th March 2017 passed by the Court of District & Session Judge, Buxar [Hereinafter referred to as the 'Trial Court'] in Sessions Trial No.256 of 2016, whereby a total of six persons were sentenced to life imprisonment along with a fine of Rs.10,000/- each under Section 302/34 of the Indian Penal Code 1860 ['IPC' for short], one year simple imprisonment each under Sections 448 & 323 along with Section 34 IPC with all of them running concurrently. Before us are three of the six convicts namely - Chandan Pasi, Pappu Pasi and Gidik Pasi. Here only it may be noted that there was a seventh accused person who was, by the process of law held to be a juvenile and thus dealt with in accordance with the applicable law.

[3] By way of a factual background, it shall suffice to take notice of the following:

3.1. On 31st March 2016, the informant Kachan Pasi along with his father Ghughali Pasi, mother Kouta Devi and sister-in-law Dharmsheela Devi were returning from the fields of one Nanhaku Singh when the accused persons surrounded the above-named and assaulted Ghughali Pasi with a katta, who died as a result thereof. Particular allegations of such assault were also levelled against Joni Pasi @Ravindra Pasi.

3.2. The Trial Court convicted in the manner already referred to supra. All the accused persons before the Trial Court filed appeals under Section 374(2) of the Code of Criminal Procedure 1973 [Hereinafter referred to as "CrPC"], in which the High Court upheld the findings of the Court below.

[4] We have heard Ms. Anjana Prakash, learned Senior Counsel for the appellants and learned Counsel appearing for the State.

[5] A perusal of the Special Leave Petition reveals that amongst other grounds, the primary contention rests on the noncompliance of Section 313, CrPC. This Court had indicated in the order issuing notice that, should the ground of proper compliance be made out, only then, we would proceed to examine other grounds.

[6] One of the non-negotiable requirements of a fair trial is that the accused persons should have ample opportunity to dispel the case and claims of the prosecution against them. This ample opportunity can take many forms, whether it is adequate representation through counsel or the opportunity to call witnesses to present their side of the case or to have the occasion to answer each and every allegation against them, on their own, in their own words. The last one happens under Section 313 CrPC.

[7] This Court, in many judgments, delineated the scope and object of Section 313 CrPC. The position is no longer up for debate. Even so, we may refer to certain pronouncements for the sake of completeness.

7.1. In **Sanatan Naskar v. State of W.B.**, 2010 8 SCC 249 this Court as follows, regarding the scope of the examination under Section 313 CrPC:

"21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the

prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. ...

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. ..."

(emphasis supplied)

7.2. In *Indrakunwar v. State of Chhattisgarh*, 2023 SCC OnLine SC 1364 this Court, through one of us (Sanjay Karol, J.), after consideration of various judgments formulated the following principles vis-à-vis this Section:

"35. A perusal of various judgments¹⁵ rendered by this Court reveals the following principles, as evolved over time when considering such statements.

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., *audi alterum partem*.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of

events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

35.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8 This statement is to be read as a whole. One part cannot be read in isolation.

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

35.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision."

7.3. In **Raj Kumar v. State (NCT of Delhi)**, 2023 17 SCC 95 as subsequently approved by a bench of three-Judges in **Aejaz Ahmad Sheikh v. State of U.P. and Another**, 2025 SCCOnLineSC 913 the Court laid down the following factors:

"**22.** The law consistently laid down by this Court can be summarised as under:

22.1. It is the duty of the trial court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction.

22.2. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence.

22.3. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused.

22.4. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

22.5. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident.

22.6. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him.

22.7. In a given case, the case can be remanded to the trial court from the stage of recording the supplementary statement of the accused concerned under Section 313CrPC.

22.8. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

[See also: **Ranvir Yadav v. State of Bihar**, 2009 6 SCC 595 and Naresh Kumar v. State of Delhi, 2024 SCCOnLineSC 1641]

[8] Having duly considered the position of law and principles as above, we now examine the statements of the appellant(s) recorded under this Section. For ready reference, the statements are reproduced below:

Appellant No.1 (Chandan Pasi) statement:

"My name is Chandan Pasi, My Father's name is Birendra Pasi ...

(1) Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM, with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this? Answer: False statement. 8 9

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.2 (Pappu Pasi) statement:

"My name is Pappu Pasi @ Hindustan Pasi ...

(1) Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegation.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

Appellant No.3 (Gidik Pasi) statement:

"My name is Gidik Pasi ...

(1) Question: - Did you listen to the Deposition of the Witnesses?

Answer: - Yes

(2) Question: - The witnesses have alleged and stated that on March 31, 2016, at 8:05 AM with common intention along with other accused persons killed the Informant's father Ghughali Pasi by assaulting with katta, daba. What do you have to say about this?

Answer: False Allegation.

(3) Question- It is also alleged and evidenced against you that you entered the Informant's house and verbally abused and physically assaulted the Informant's niece Poonam Kumari and Kajal Kumari, along with his nephew, Raju Kumar. What do you have to say about this?

Answer: False allegations.

(4) Question: - Whether you want to Say anything in your defence?

Answer: I am innocent."

[9] The statements extracted above reveal a sorry state of affairs- an abject failure on the part of the Court in complying with the basic tenets of law. The statements given by all three persons are carbon copies of each other. How such statements can pass muster at the hands of the learned Trial Judge is something which we fail to understand. Out of the four questions asked, directly related to the sequence of events, were only two. The second question was as general as can be, with reference to only the bare allegations, to which an omnibus denial was issued. The third was also of similar nature, saying that it has been alleged and evidenced, and nothing further. This cannot be said to be the putting of every material circumstance. It is equally disturbing for us to see that in the desire to secure a conviction for the accused persons, the

prosecutor also let their duty of assisting the Court in conducting the examination of the accused under this section fall by the wayside. The prosecutor is an officer of the Court and holds a solemn duty to act in the interest of justice. They cannot act as a defence lawyer, but for the State, with the sole aim of making the gauntlet of punishment fall on the accused. [See: Sovaran Singh Prajapati v. State of U.P., 2025 SCCOnLineSC 351]

[10] In view of the above observations, we need not delve into the other grounds raised, questioning the concurrent conviction against the appellants herein. On this ground alone, the Appeals are allowed and the matter is sent back to the concerned Trial Court to recommence from the state of the recording of the Section 313 CrPC statements. We may clarify that the remand is limited to the cases of the three appellants before us and our observations herein shall not affect the sanctity of the findings already arrived at, qua the other accused persons. A trial is a function of memory; it is this memory that, when translated into spoken word testimony on oath, becomes evidence, and thus the same is susceptible to the vagaries of time. Keeping in view the fact that the offence is from the year 2016, and while being cognizant of the observations of the Constitution Bench in High Court **Bar Association, Allahabad v. State of U.P.**, 2024 6 SCC 267 we direct the concerned Trial Court to do the needful within four months from the date of the communication of this judgment.

[11] Registrar (Judicial) to communicate this judgment and order to the learned Registrar General, High Court of Judicature at Patna, who will forthwith communicate the same to the concerned court for necessary action and compliance.

Pending application(s), if any, shall stand disposed of

2026(1)MBAJ53

IN THE SUPREME COURT OF INDIA

[From JHARKHAND HIGH COURT]

(Hon'ble Judge: Vikram Nath; Sandeep Mehta)

Criminal Appeal No. 305 of 2024 **dated 27/11/2025**

Suresh Sahu & Another

Versus

State of Bihar (Now Jharkhand)

FAULTY EXAMINATION

Constitution of India Art. 136 - Indian Penal Code, 1860 Sec. 149, Sec. 34, Sec. 302, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 161, Sec. 164, Sec. 313 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 351, Sec. 180 - Faulty Examination - Accused faced trial for murder and conspiracy under penal provisions - Evidence disclosed discrepancies between two reports and absence of investigating officer's

testimony - Statements under procedural section recorded in a mechanical manner causing prejudice to accused - Prosecution relied on oral dying declaration though medical evidence indicated incapacity of deceased to speak - Witness statements inconsistent and recorded belatedly - Defence witnesses supported plea of false implication - Finding of guilt by lower courts held unsustainable - Conviction set aside - Appellants acquitted - Appeal Allowed

Law Point: Mechanical examination under procedural provisions without confronting accused with incriminating evidence vitiates trial when it causes prejudice - Non-examination of investigating officer and contradictions in witness statements create reasonable doubt entitling accused to acquittal

Acts Referred:

Constitution of India Art. 136

Indian Penal Code, 1860 Sec. 149, Sec. 34, Sec. 302, Sec. 120B

Code of Criminal Procedure, 1973 Sec. 161, Sec. 164, Sec. 313

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 351, Sec. 180

Counsel:

Tripurari Ray, Anirudh Ray, Bhanu Prabha, Atul Wadera, Arpita Mishra, Manu Shanker Mishra, Rajiv Shankar Dvivedi, Tulika Mukherjee, Beenu Sharma, Venkat Narayan

JUDGEMENT

SANDEEP MEHTA, J.- [1] Heard.

[2] The appellants [Hereinafter, referred to as the "accused-appellants"] herein faced trial before the 3rd Additional Judicial Commissioner, Ranchi [Hereinafter, referred to as the "trial Court"] in Sessions Trial No. 128 of 1991. Vide judgment dated 30th August, 1994, the learned trial Court convicted the accused-appellants for the offences punishable under Section 120B, Section 302 and Section 302/149 of the Indian Penal Code, 1860 [For short, "IPC"]. The accused-appellants were sentenced to undergo imprisonment for life for the aforesaid offences.

[3] Being aggrieved by their conviction and sentence, the accused-appellants preferred Criminal Appeal (DB) No. 150 of 1994 before the High Court of Jharkhand at Ranchi [Hereinafter, referred to as the "High Court"]. During the pendency of the appeal, the sentences awarded to the accusedappellants by the trial Court were suspended and they were ordered to be released on bail. The aforestated appeal of the accused-appellants came to be dismissed by the High Court vide judgment dated 10th February 2023, wherein the High Court modified the conviction to one under Section 302/34 IPC and imposed a fine of Rs. 2,000 on the accused appellants, in addition to the life imprisonment already awarded by the trial Court. The said judgment is the subject matter of challenge in the present appeal.

[4] The accused-appellants surrendered on 1st May, 2023 and currently are in custody.

Brief Facts:-

[5] Briefly stated, the facts relevant and essential for disposal for the appeal are noted hereinbelow.

[6] As per the initial case of prosecution, the informant, Rameshwar Sahu (PW-3), along with his son, Gajendra Prasad Gupta [For short "Gajendra".], had left his home on 11th May, 1990 at about 3:00 p.m. to sell sweets at the Jatra Mela held at village Jhinhari. Gajendra set up his stall and commenced selling sweets. Three persons approached his stall and demanded quarter kg sweets. Gajendra provided the sweets and asked for payment. The said individuals allegedly refused to pay, whereupon Gajendra declined to give them the sweets. An altercation ensued, during the course of which the three persons threatened Gajendra, stating that they would accost and kill him on the way back home. The quarrel was pacified by Lalu Ahir, the watchman of Mandar Police Station, and Etwa Oraon, a resident of Sakarpada. Thereafter, the informant and his son wound up the stall and left for their home. It is alleged that when they reached Jhinhri Dam, the same three persons intercepted them by inserting a stick into the front wheel of Gajendra's bicycle, causing him to fall. Gajendra attempted to run, but the assailants chased him down, and thereafter assaulted him with wooden sticks, chains, and hockey sticks. When the informant tried to intervene, the assailants allegedly threatened him as well, warning that he too would be killed if he did not flee. The assailants continued beating Gajendra, causing injuries to his forehead, chest, and arms. After the assault, the accused persons fled, whereafter the informant and others proceeded to check upon Gajendra, who was first taken in an injured condition to Mandar Hospital, wherefrom the attending doctor referred him to R.M.C.H., Ranchi. Gajendra was admitted and underwent treatment at R.M.C.H., Ranchi. However, on 12th May, 1990 at about 8:00 a.m., he succumbed to his injuries. The informant alleged that he, as well as watchman Lalu Ahir and Etwa Oraon, could identify the assailant upon seeing them.

[7] The aforesaid version, in the form of the Fardbeyan (Exh. 1) of the informant Rameshwar Sahu (PW-3), was recorded by ASI R. Paswan of Bariatu Police Station on 12th May 1990 at R.M.C.H., Ranchi. On the basis of the said Fardbeyan (Exh. 1), FIR No. 1858 dated 12th May 1990 was registered and forwarded to Mandar Police Station for requisite follow up action.

[8] It seems that the informant (PW-3) was not satisfied with the aforesaid report and suspected some foul play and thus, he gave a written report (Exh. 5) to the officer in Charge of Mandar Police Station on 13th May, 1990 alleging inter alia that he had gone to the Jatra fete (mela) at village Jhinhri along with his son, Gajendra, for selling sweets. After selling sweets, they left for their home in the evening at about 7:00 p.m. along with Ashok Sahu (son of Khakhandu Sahu), Khakhandu Sahu (son of Kuchu Sahu), and Jatan Sahu (son of Fuchai Sahu). When they had reached Dumphu at

around 7:30 p.m., four to five men came in front of them armed with wooden sticks and hockey sticks. One of them inserted a stick into the wheel of Gajendra's bicycle, due to which he fell down. The assailants caught hold of Gajendra and dragged him towards a nearby pit. When the informant and his companions tried to follow, the assailants threatened to kill them as well, due to which they stepped back out of fear. It is stated that the assailants then started beating Gajendra who was heard shouting "Don't beat me, leave me Aditya, leave me Suresh." Being old, infirm and having weak eyesight, the informant could not save his son. When Gajendra's voice fell silent and the assailants went away, the informant and his companions went to the spot and found Gajendra lying on the pathway soaked in blood. Heavy bleeding was visible from his forehead and injuries on several other parts of his body. On being asked, Gajendra stated that Suresh and Aditya, along with five or six unknown persons, had beaten him, and he kept beseeching them in the words "don't kill me Aditya, don't kill me Suresh." Gajendra was lifted from the spot and was taken to R.M.C.H., Ranchi, where he died on 12th May, 1990. After post-mortem examination, the dead body was brought home and cremated. The informant further stated that there was a case pending between his son and his nephews, Suresh Sahu and Aditya Sahu, relating to employment in lieu of land acquisition, and that on account of this enmity, Suresh and Aditya, along with others, assaulted his son with wooden sticks and hockey sticks and he died because of the injuries received in the incident.

[9] On the basis of this written report, another FIR being Case No. 43/1990 dated 13th May, 1990 came to be registered at Mandar Police Station.

[10] Investigation of the case was assigned to the very same ASI R. Paswan who had recorded Fardbeyan (Exh. 1). After concluding the investigation, chargesheet came to be filed against the accused-appellants and the case was committed to the trial Court. Charges were framed against the accused persons who pleaded not guilty and claimed trial. The prosecution examined six witnesses and exhibited five documents to prove its case. The statements of the accused-appellants were recorded under Section 313 of Code of Criminal Procedure, 1973 [For short, "CrPC"] (Section 351 of Bharatiya Nagarik Suraksha Sanhita [For short, "BNSS"]) which make a very interesting reading and are reproduced hereinbelow verbatim for ready reference: -

" (A) Suresh Prasad Sahu

The examination of Suresh Prasad Sahu aged about 35 years, taken before me, Bal Govind Prasad 3rd Judicial Magistrate on 16th Day of December 1993, in the Hindi language.

My name is Suresh Prasad Sahu, My father's/husband's name is Shri Bigal Sahu. My age is 35 years. I am by religion Hindu, My nationality is Indian and I belong to Schedule Caste/Tribe. I am by occupation salaried. My home is at Mauza Kanbitha Police Station Mandar District Ranchi.

Question 1 - Witnesses against you allege that on May 11, 1990, Jhinhari Chauraha, Jhinhari Village police station, Mandar district Ranchi, was a member of an illegal party whose objective was to kill Gajendra Prasad Gupta. What do you have to say?

Answer - It is wrong.

Question 2 - It is also evidence that on that day and time you and your friend Aditya Prasad Sahu has killed Gajendra Prasad Gupta. What do you have to say?

Answer - It is wrong.

Question 3 - What else do you have to say?

Answer - I was on duty on the day of the incident. I have been implicated in the enmity.

I will give witness in the defence.

The above examination was taken in my presence and hearing, and contents a full and true account of the statements made by the accused. It was read over to the accused or interpreted to him in the language which he understands and was admitted by him to be correct."

xxxxxxx

(B) Aditya Prasad Sahu

"The examination of Aditya Prasad Sahu aged about 35 years, taken before me, Bal Govind Prasad 3rd Judicial Magistrate, on 16th Day of December 1993, in the Hindi language. My name is Aditya Prasad Sahu, My father's/husband's name is Shri Laxman Sahu. My age is 35 years. I am by religion Hindu, My nationality is Indian and I belong to Schedule Caste/Tribe. I am by occupation salaried. My home is at Mauza Kanbitha Police Station Mandar District Ranchi.

Question 1 - There is an evidence over you allege that on May 11, 1990, Jhinhari Chauraha, Jhinhari Village police station, Mandar district Ranchi, was a member of an illegal party whose aim was to kill Gajendra Prasad Gupta. What do you have to say?

Answer - It is a lie.

Question 2 - It is also evidence that on that day and time you and your friend Suresh Prasad Sahu has killed Gajendra Prasad Gupta. What do you have to say?

Answer - It is a lie.

Question 3 - What else do you have to say in defence?

Answer - I was on my duty on the day of the incident. My family had enmity with the family of the deceased, so I have been wrongly implicated. I will give witness in the defence.

The above examination was taken in my presence and hearing, and contents a full and true account of the statements made by the accused. It was read over to the accused or interpreted to him in the language which he understands and was admitted by him to be correct."

(Emphasis Supplied)

[11] Seven witnesses were examined in defence, two of whom, as per the written report (Exh. 5), namely, Jatan Sahu (DW-1) and Khakhandu Sahu (DW-2), were accompanying the informant and the deceased Gajendra, at the time when the latter was allegedly assaulted. Both these witnesses (DW-1 & DW-2) did not implicate the accused-appellants in the crime and rather stated that there was a fight between Gajendra and some tribal people over selling of sweets. Gajendra was beaten up and became unconscious, but the witnesses could not identify the assailants. They also stated that Aditya Sahu and Suresh Sahu were not seen in the Jatra fair.

[12] At this stage, a very important fact that needs to be noted is that the Investigating Officer ASI R. Paswan who recorded the Fardbeyan (Exh. 1) and investigated the case was not examined by the prosecution.

[13] Be that as it may, the accused-appellants stand convicted and their appeals have been rejected in the manner stated above, upon which the instant appeal by special leave has been laid before us for consideration.

Submissions on behalf of the accused-appellants:-

[14] Learned Counsel representing the accused appellants advanced the following submissions for assailing the impugned judgment and seeking acquittal for the accused-appellants:-

a) That the Fardbeyan (Exh. 1) of the informant, Rameshwar Sahu (PW-3), was the actual first information report recorded by ASI R. Paswan (the Investigating Officer) and the High Court committed grave error in discarding the said report and treating the subsequent written report (Exh. 5) dated 13th May, 1990 to be the actual first information report of the incident. As per learned counsel, the said report would be hit by Section 161 CrPC (Section 180 BNSS).

b) That the evidence of PW-3, the first informant is highly unnatural and full of embellishments, and he falls in the category of a totally unreliable witness. The witness failed to identify the accused at the time of the incident even though he claims to be an eye witness to the incident.

c) That the version of the informant (PW-3), that his son, Gajendra, shouted out the names of the assailants to be Aditya and Suresh while he was being assaulted is absolutely unbelievable. Had the witness observed anything of that sort, he would have immediately disclosed the same to the ASI R. Paswan, who recorded the Fardbeyan (Exh. 1) at the R.M.C.H., Ranchi on 12th May, 1990.

d) That the prosecution theory that Tapeshwari Kumari (PW-1) and Saroj Kumari (PW-2), being the sisters of the deceased, heard the deceased making an oral dying

declaration when he was brought home after being assaulted is cooked up and unbelievable. The statements of these witnesses under Section 161 CrPC (Section 180 BNSS) were admittedly recorded after more than one and a half month of the incident. The rank silence of these witnesses being the close relatives, in disclosing this important fact to the police at the earliest possible opportunity completely demolishes their credibility.

e) That grave prejudice has been caused to the accused owing to the perfunctory manner in which their statements under Section 313 CrPC (Section 351 BNSS) were recorded. The High Court failed to consider this vital aspect of the matter and hence the impugned judgment is vitiated as having been passed in ignorance of this crucial issue which goes to the root of the matter.

f) That the material witness ASI R. Paswan who recorded the Fardbeyan (Exh. 1) and conducted the investigation of the case was not examined at the trial, and no explanation is forthcoming for his nonexamination. He would have been the best person to throw light on the inconsistency between the Fardbeyan (Exh. 1) and the written report (Exh.5). The non-examination of the said police officer has caused grave prejudice to the defence and as such, adverse inference deserves to be drawn against the prosecution.

g) That Jatan Sahu (DW-1) and Khakandu Sahu (DW-2) who were named in the written report (Exh.5) as being the witnesses present at the crime scene along with the informant (PW-3) and the deceased, were not examined by the prosecution. Both these witnesses were examined by the defence as DW-1 and DW-2 and they have categorically stated that the accused-appellants were not the assailants. Neither the trial Court nor the High Court duly considered the effect of the evidence of these two eye-witnesses on the veracity of the prosecution case. If at all, the prosecution was desirous to seek corroboration for the wavering testimony of the first informant (PW-3), these two witnesses (DW-1 and DW-2) would have been the best placed persons to provide such corroboration.

[15] On these grounds, learned Counsel for the accused-appellants, implored the Court to set aside the impugned judgment, acquit the accusedappellants of the charges while accepting the appeal.

Submissions on behalf of respondent-State: -

[16] Per contra, learned Counsel representing the State, supported the impugned judgment. He urged that both the Courts below, for convicting the accused appellants for the charge of murder, have recorded concurrent findings of facts after due appreciation of evidence on record. The finding of facts so recorded by the trial Court and affirmed by the High Court do not suffer from any infirmity warranting interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India. He, therefore, sought dismissal of the appeal.

Discussion:-

[17] We have given our thoughtful consideration to the submissions advanced at bar and shall deal with the same while reappreciating the evidence available on record. We have also gone through the impugned judgment of the High Court as well as the judgment of the trial Court and carefully reanalyzed the evidence on record.

A. Defective Examination of the Accused Under Section 313 CrPC (Section 351 BNSS)

[18] It is evident from the record that only three questions were put to each of the accused in their examination under Section 313 CrPC (Section 351 BNSS). These questions were framed in an extremely generic and mechanical manner, without articulating any of the specific incriminating circumstances appearing in the prosecution evidence.

[19] The purpose of recording the statement of an accused under Section 313 CrPC (Section 351 BNSS) is to make the accused aware of the circumstances as appearing against him in the prosecution case and to seek his explanation for the same. For this purpose, the accused must be informed of each and every incriminating circumstance which the prosecution intends to rely upon for bringing home the guilt of the accused. Omission to put material circumstances to the accused in the statement under Section 313 CrPC (Section 351 BNSS) would cause grave prejudice and may, in a given case, even prove fatal to the case of the prosecution. Of course, the appellate Court can rectify this error by requiring that a fresh statement under Section 313 CrPC (Section 351 BNSS) be recorded for removing the lacunae, if any, in this procedure. In the present case, on going through the statements of both the accused persons recorded by the trial Court under Section 313 CrPC (Section 351 BNSS) (supra), we find that these statements are almost a reproduction of the language of the charge and, in no manner, convey to the accused persons the incriminating circumstances/evidence produced by the prosecution so as to indict them for the crime. This defect goes to the root of the matter.

[20] In this regard, we may refer to the judgment of this Court in the case of **Ashok v. State of Uttar Pradesh**, 2024 INSC 919 wherein a three-Judge Bench of this Court observed as follows: -

"14. Now, we come to the appellant's statement, recorded per Section 313 of the CrPC. Only three questions were put to the appellant. In the first question, the names of ten prosecution witnesses were incorporated, and the only question asked to the appellant was what he had to say about the testimony of ten prosecution witnesses. In the second question, all the documents produced by the prosecution were referred, and a question was asked, what the appellant has to say about the documents. In the third question, it was put to the appellant that knowing the fact that the victim belongs to a scheduled caste, he caused her death after raping her and concealed her dead body, and

he was asked for his reaction to the same. **What PW-1 and PW-2 deposed against the appellant was not put to the appellant. The contents of the incriminating documents were not put to the appellant.**

15. In the case of Raj Kumar, in paragraph 17, this Court has summarised the law laid down by this Court from time to time on Section 313 of the CrPC. Paragraph 17 reads thus:

"17. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

In a given case, the witnesses may have deposed in a language not known to the accused. In such a case, if the material circumstances appearing in evidence are not put to the accused and explained to the accused, in a language understood by him, it will cause prejudice to the accused.

16. In the present case, there is no doubt that material circumstances appearing in evidence against the appellant have not been put to him. **The version of the main**

prosecution witnesses PWs-1 and 2 was not put to him. The stage of the accused leading defence evidence arises only after his statement is recorded under Section 313 of the CrPC. Unless all material circumstances appearing against him in evidence are put to the accused, he cannot decide whether he wants to lead any defence evidence. In this case, even the date and place of the crime allegedly committed by the appellant were not put to the appellant. **What was reportedly seen by PW-2 was not put to the appellant in his examination. Therefore, the appellant was prejudiced. Even assuming that failure to put material to the appellant in his examination is an irregularity, the question is whether it can be cured by remanding the case to the Trial Court.**

17. The date of occurrence is of 27th May 2009. **Thus, the incident is fifteen and a half years old. After such a long gap of fifteen and half years, it will be unjust if the appellant is now told to explain the circumstances and material specifically appearing against him in the evidence. Moreover, the appellant had been incarcerated for about twelve years and nine months before he was released on bail. Therefore, considering the long passage of time, there is no option but to hold that the defect cannot be cured at this stage. Even assuming that the evidence of PW-2 can be believed, the appellant is entitled to acquittal on the ground of the failure to put incriminating material to him in his examination under Section 313 of the CrPC. We are surprised to note that both the Trial Court and High Court have overlooked noncompliance with the requirements of Section 313 of the CrPC. Shockingly, the Trial Court imposed the death penalty in a case which ought to have resulted in acquittal. Imposing capital punishment in such a case shocks the conscience of this Court."**

(Emphasis supplied)

[21] Recently, this Court in the case of **Ramji Prasad Jaiswal v. State of Bihar**, 2025 INSC 738 reiterated the position of law and held as follows: -

"35. After surveying the law on this point, let us revert back to the facts of the present case. The manner in which the trial court had recorded the statements of the appellants under Section 313 CrPC was not at all in tune with the requirements 5 (2025) 2 SCC 381 31 of the said provision as explained by this Court as discussed supra.

36. Four questions generally were put to the appellants, that too, in a most mechanical manner. These questions did not reflect the specific prosecution evidence which came on record qua the appellants. As all the incriminating evidence were not put to the notice of the appellants, therefore, there was a clear breach of Section 313 CrPC as well as the principle of audi alteram partem. Certainly, this caused serious prejudice to the appellants to put forth their case. Ultimately, such evidence were relied upon by the court to convict the appellants.

37. Therefore, there is no doubt that such omission, which is a serious irregularity, has completely vitiated the trial. Even if we take a more sanguine approach by taking the view that such omission did not result in the failure of justice, it is still a material defect albeit curable. In Raj Kumar (supra), this Court highlighted that while deciding whether such defect can be cured or not, one of the considerations will be the passage of time from the date of the incident.

38. As we have already noted, the period during which the offence was allegedly committed was from September, 1982 to December, 1982. Trial was concluded on 29.05.2006. Nineteen years have gone by since then. At this distant point of time, instead of aiding the cause of justice, it will lead to miscarriage of justice if the case qua the two appellants are remanded to the trial court to restart the trial from the stage of recording the statements of the accused persons under Section 313 CrPC. In such circumstances, we are of the considered opinion that it is neither possible nor feasible to order such remand. Consequently, appellants are entitled to the benefit of doubt because of such omission in the recording of their statements under Section 313 Cr.P.C. since the trial court had relied on the evidence adverse to the appellants while convicting them."

(Emphasis supplied)

[22] It is pertinent to note that the High Court, in the impugned judgment, has not even discussed the perfunctory manner in which the statements of the accused-appellants under Section 313 CrPC (Section 351 BNSS) were recorded (supra).

[23] Looking to the highly laconic and defective manner in which the statements of the accused appellants were recorded under Section 313 CrPC (Section 351 BNSS) (supra), we could have remanded the matter to the trial Court for re-recording the said statements and for delivering a fresh judgment. However, considering the fact that more than 35 years have passed since the incident took place, we feel that it would be nothing short of an exercise in futility to direct such remand. We have, therefore, minutely sifted through the evidence on record and shall analyze the same to adjudicate as to whether the conviction of the accused-appellants is justified in the facts, circumstances and evidence as available on record.

B. Evaluation of the Two Reports and NonExamination of the Investigating Officer

[24] The High Court, while dealing with the issue of two FIRs, held that the Fardbeyan (Exh. 1) dated 12th May, 1990 was totally denied by the informant (PW3) and, therefore, the same could not be treated to be the actual First Information Report. It was further held that the written information (Exh. 5) dated 13th May, 1990, the contents whereof were proved by the maker (PW-3), was the actual FIR of the incident. For arriving at this conclusion, the High Court, observed that merely because

the informant, Rameshwar Sahu (PW-3), admitted his signatures on the Fardbeyan (Exh. 1), the same could not, by itself, establish it to be the FIR of the incident. The explanation offered by the informant (PW-3) that his brothers, Laxman and Bigan, took his signatures on the document by keeping him into dark and misleading him, was accepted to be justifiable, and on this unconvincing premise, the FIR based on the Fardbeyan (Exh. 1) was excluded from consideration.

[25] However, we find this approach of the High Court to be quite perfunctory and unacceptable on the face of record. We may note that the Fardbeyan (Exh. 1) as well as the formal FIR (Exh. 5) were both recorded and acknowledged by the same police officer ASI R. Paswan, who had also conducted the investigation of the matter. Both documents contain facts which could not have been within the knowledge of anyone other than the informant, Rameshwar Sahu (PW-3). Indisputably, the informant signed both the reports. If, at all, the prosecution was desirous of questioning the veracity of the Fardbeyan (Exh.1), on the ground of tampering/undue influence, it was absolutely imperative for it to have examined the Investigating Officer ASI R. Paswan in evidence. However, the prosecution neither made any effort nor offered any explanation for non-examination of the most crucial witness, i.e., the Investigating Officer ASI R. Paswan. Had ASI R. Paswan been examined on oath, the genuineness or otherwise of the Fardbeyan (Exh. 1) could have been duly tested. Non-examination of a material witness would give rise to adverse inference and the benefit thereof would normally go to the defence unless of course a satisfactory explanation for the omission was offered.

[26] No such explanation having been offered, there is no escape from the conclusion that the withholding of the witness was a deliberate attempt by the prosecution to cover up the crucial flaw in its case.

[27] This Court in *Harvinder Singh @ Bachhu v. State of Himachal Pradesh*, 2023 SCC OnLine SC 1347, 2023 INSC 907 has held that deliberate withholding of material witnesses by the prosecution would destroy its credibility, leading the Court to draw adverse inference. It was observed as follows:-

"24. Failure on the part of the prosecution in not examining a witness, though material, by itself would not vitiate the trial. However, when facts are so glaring and with the witnesses available, particularly when they are likely to give a different story, the Court shall take adequate note of it. When a circumstance has been brought to the notice of the Court by the defense and the Court is convinced that a prosecution witness has been deliberately withheld, as it in all probability would destroy its version, it has to take adverse notice. Anything contrary to such an approach would be an affront to the concept of fair play. In *Takhaji Hiraji v. Thakore Kubersing Chamansing*, 2001 6 SCC 145,

"19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent

witnesses. **It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.** On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of nonexamination of other witnesses "

(Emphasis supplied)

[28] In the light of the above principle, the failure of the prosecution to examine ASI R. Paswan, the police officer who recorded the Fardbeyan (Exh. 1) and registered the formal FIR (Exh. 5), assumes critical significance. The prosecution's failure to produce this material witness for deposition necessarily attracts an adverse inference. Rank failure of the prosecution to explain the circumstances under which the Fardbeyan (Exh. 1) was recorded and by avoiding to produce the scribe of the vital document i.e. ASI R. Paswan, gives the defence a right to claim grave prejudice and the prosecution cannot be allowed to take advantage of its own follies.

[29] The Fardbeyan (Exh. 1) sets out minute details of the incident and also takes note of the fact that after the incident, when Gajendra had fallen down injured, the informant (PW-3) along with his companions, took him to the Mandar Hospital for treatment, from where the injured was referred to R.M.C.H., Ranchi. Hence, the reasoning given by the High Court for discarding the Fardbeyan (Exh. 1) and not treating it to be the actual First Information Report is patently erroneous and unacceptable on the face of record. It may be noted that in the said Fardbeyan (Exh. 1), the informant (PW-3) did not mention the name of any of the assailants. Hence, once the Fardbeyan (Exh. 1) is treated to be the actual First Information Report of the incident, this omission assumes great significance in evaluating the prosecution's case.

Consequently, the subsequent report (Exh. 5) could not be treated to be anything other than a statement under Section 161 CrPC (Section 180 BNSS).

C. Credibility of the Informant and Inconsistencies in His Statements

[30] In the first report dated 12th May, 1990 based upon the Fardbeyan (Exh. 1), there is a clear reference of two incidents, the first of which took place when the deceased Gajendra was selling sweets in the fair, and the second, when the informant (PW3) along with his son and other companions were returning home. In the second report (Exh. 5) dated 13th May, 1990, the informant completely changed the version and did not make any reference of the first incident. For the second incident, he tried to rope in the accused-appellants claiming that his son, while being assaulted, was shouting "Do not beat me, leave me Aditya, leave me Suresh". This belated theory projected in the subsequent report (Exh. 5), on the face of the record seems to be a sheer embellishment introduced by the informant at a belated stage for oblique motive of implicating the accused-appellants in the case.

[31] This theory projected in subsequent report (Exh. 5) was further harped upon in the sworn testimony of the informant, Rameshwar Sahu (PW-3), recorded at the trial. In our opinion, this is a clear embellishment which has been put forth under legal advice to overcome the effect of omission of names of the accused in the original report registered on the basis of Fardbeyan (Exh. 1). The High Court, while considering the impact of this material omission, and the plea of the accused claiming adverse inference based on the fact of non-examination of the Investigating Officer, recorded the following findings:-

"43. The learned senior counsel for the appellants also contended that in this case, the I.O. was not examined and same is fatal to the prosecution case. More so, the very first fard beyan was also suppressed and the F.I.R. was not lodged. All these circumstances could have been explained by the I.O. and his nonexamination is fatal to the prosecution case.

44. Admittedly, the I.O. was not examined on behalf of the prosecution in this case. Nonexamination of the I.O. is not found fatal keeping in view 'the facts and circumstances of the case. So far as the place of occurrence is concerned, there is no dispute in regard to the place of occurrence. The only dispute is raised on the issue that the assailants were the unknown persons and name of the appellants were mentioned by the informant on account of animosity.

45. In this case whether the appellants were falsely implicated in this case on account of animosity is to be decided in view of the testimony of the informant and other corroborating evidence to that effect. P.W.-3 Rameshwar Sahu and other witnesses who were examined before the trial court in regard to the fact that there is no contradiction in their testimony given before the court and their statements recorded by the I.O. under Section 161 Cr.P.C. as well as the statement of this witness P.W.-3 Ramehswar Sahu which was

recorded under Section 164 Cr.P.C. before the Magistrate and the same are also proved by P.W.- 4 B.K. Singh, Judicial Magistrate. Certainly, the presence of the I.O. is necessary in order to show the contradiction in the testimony of the witnesses, if the same is brought out during cross-examination of the witnesses or if there is recovery of any article, the examination of the I.O. was necessary. Keeping in view the facts and circumstances and also the evidence on record, the non-examination of the I.O. is not found fatal to the prosecution case."

[32] Admittedly, litigation was going on between the deceased Gajendra and the accused-appellants in relation to the grant of employment, pursuant to the acquisition of the family lands by the C.C.L. This ongoing litigation, in our opinion, gave a strong motive to the complainant party to implicate the accused-appellants in the crime for settling the scores.

[33] Another important and vital factor which needs to be noted is that the informant, Rameshwar Sahu (PW-3), did not mention in the subsequent report (Exh. 5) that anyone had taken his signatures on a blank paper on which the Fardbeyan (Exh. 1) was written. Had there been a semblance of truth in this allegation, the informant would definitely have mentioned in the subsequent report (Exh. 5) that his brothers, Laxman and Bigan, had taken his signatures on a blank sheet of paper. The omission to disclose such a material fact at the earliest opportunity renders the belated explanation wholly unconvincing and bereft of substance.

[34] Hence, we do not subscribe to the observations made and finding recorded by the High Court that the Fardbeyan (Exh. 1) was not the actual FIR of the incident.

[35] We are convinced that the prosecution is guilty of superseding the actual first information report of the incident i.e. (Exh. 1) dated 12th May, 1990 and replacing it by subsequent report (Exh. 5) dated 13th May, 1990, which incorporated an improved/exaggerated version, to be specific, by nominating the accused-appellants for the assault made on the deceased. The view taken by the trial Court and affirmed by the High Court that the first report based on the Fardbeyan (Exh. 1) was written out by keeping the informant in dark, is unacceptable looking to the material available on record and the discussion made supra.

[36] It can be presumed that the Fardbeyan (Exh.1) must have been scribed by the police officer ASI R. Paswan who also endorsed the same at the R.M.C.H., Ranchi. There could not have been any reason for the police officer, ASI R. Paswan to not faithfully record the Fardbeyan (Exh. 1) and leave out the names of the accused had the informant made such revelations to him. In this background, nonexamination of the Investigating Officer ASI R. Paswan, who recorded the vital documents i.e. Fardbeyan (Exh. 1) and the subsequent report (Exh.

5) gains even more significance and is fatal to the prosecution case. The informant (PW-3) was put a pertinent question in his cross-examination

regarding the allegation that his brothers Laxman and Bigan had taken his signatures on the Fardbeyan (Exh. 1). The witness admitted that he did not state this at the Mandar Police Station. Furthermore, this fact also does not find mention in both his statements recorded under Section 164 CrPC (Section 183 BNSS). Thus, the conclusion drawn by the High Court casting a doubt on the Fardbeyan (Exh. 1) and not treating it to be the actual FIR of the incident is contrary to the evidence available on record and cannot be accepted.

[37] Another significant loophole in the prosecution case is borne out from the two statements of the informant, Rameshwar Sahu (PW-3), recorded under Section 164 CrPC (Section 183 BNSS). In his first statement recorded on 19th May, 1990, the informant alleged that the incident took place after darkness had set in. He was carrying a lantern. Suresh pushed him down and broke the lantern. His son took the name of Suresh and shouted that he should be spared. Significantly, in this statement, the name of the accused Aditya was not mentioned. It was only in the second statement of the informant recorded under Section 164 CrPC (Section 183 BNSS) on 21st May, 1990 wherein he introduced the name of accused Aditya in addition to Suresh. We may take note of the fact that the lantern was not mentioned in the subsequent report (Exh.5).

[38] On a perusal of the evidence of the Magistrate (PW-4), who recorded both these statements recorded under Section 164 CrPC (Section 183 BNSS), it is evident that the second statement dated 21st May, 1990 was recorded on the basis of an application stating that the entire facts could not be disclosed in the first statement dated 19th May, 1990 because of panic. This deliberate attempt by the informant (PW3) to improve and modulate the version step by step by substituting the original FIR (Exh. 1) with the subsequent report (Exh. 5) and recording multiple statements to fill up the lacunae, completely demolishes the credibility of the prosecution case. This systematic attempt by the prosecution to introduce the names of the accused-appellants in subsequent documents and statements completely undermines the evidentiary worth of the star prosecution witness, i.e., the first informant Rameshwar Sahu (PW-3).

[39] Even if the embellished version of the witness (PW-3) were to be accepted, it is apparent that he could not himself identify the accused-appellants which is very strange and unbelievable considering the fact that the accused-appellants were none other than his own nephews and hence, the failure of the informant to identify his own close relatives as being the assailants of his son makes his evidence doubtful.

[40] Further, in the first statement dated 19th May, 1990 recorded under Section 164 CrPC (Section 183 BNSS), the informant (PW-3) manipulated his earlier version by claiming that before being taken to the hospital, his son was taken to their home. This deviation appears to be a calculated design to introduce the theory of an oral dying declaration by Gajendra in the presence of his sisters Tapeshwari Kumari (PW-1) and Saroj Kumari (PW-2). However, when we go through the evidence of these two witnesses, it is evident that their statements under Section 161 CrPC (Section 180

BNSS) mentioning about the oral dying declaration were recorded after more than one and a half months of the incident. Furthermore, in neither of the two reports lodged by the informant Rameshwar Sahu (PW-3), i.e., Exh. 1 and Exh. 5, is there a whisper that Gajendra after being assaulted was first taken to their home, where he made an oral dying declaration and from there, he was taken to the hospital. Thus, the projection of an oral dying declaration, as sought to be introduced in the testimony of the witnesses, Tapeshwari Kumari (PW-1) & Saroj Kumari (PW-2) whose 161 CrPC (Section 180 BNSS) statements were recorded after a great delay is a sheer piece of concoction, and their evidence on this aspect is unworthy of credence and unacceptable.

D. Implausibility of the Oral Dying Declaration

[41] The prosecution relies heavily on the disclosure of the names of the accused-appellants in the oral dying declaration of the deceased. However, having gone through the evidence of the medical jurist, Dr. Ajit Kumar Chaudhary (PW-5), we are unable to subscribe to the theory that the deceased would have been in a position to speak after receiving the injuries described below: -

"Abrasions:

- 1) 1/2 x 1/2 cm, 1/2 x 1/2 cm over left elbow back.
- 2) 1/2 x 1/2 cm over left thumb.

Bruises:

- 1) 8 x 2 cm over front of abdomen upper part situated transversely.
- 2) 5 x 2 cm over front of right side abdomen.
- 3) 4 x 2 cm over front of right thigh. Lacerated wound (stitched):
 - 1) 4 x 1 cm x scalp deep over the right parietal region of head.
 - 2) 4 1/2 x 1 cm x scalp deep on the right occipital region of head.
 - 3) 4 x 1 cm x scalp deep over left parietal region of head.

Internal Injuries:

There was defused contusion of whole scalp and both temporalis muscles. There was Crack Fracture of right temporo-parieto-occipital bone and the fracture line extends to left parietal bone and another crack fracture measuring 7 cm long was present on right parietal bone situated anteroposterior. There was presence of subdural blood and blood clot over both sides of right temporal lobe of brain."

(Emphasis supplied)

[42] It is impossible to believe that, having received such grave head/cranial injuries, the deceased would have been in a position to speak what to talk of making an oral dying declaration.

[43] That apart, admittedly, the deceased was taken to the hospital at Mandar, at the first instance, from where he was referred to R.M.C.H., Ranchi. The treatment documents of the deceased from the Mandar Hospital could have provided vital

information regarding his condition at the time of arrival at the hospital. However, the prosecution did not bring any such document on record, which further weakens the case of prosecution on the theory of oral dying declaration.

[44] The evidence of Tapeshwari Kumari (PW-1) and Saroj Kumari (PW-2), being the sisters of the deceased, on the aspect of oral dying declaration is unworthy of credence for the reasons which we have assigned above, 11 Paras 42 and 43.

[45] The evidence of the informant, Rameshwar Sahu (PW-3), suffers from inherent inconsistencies and contradictions and suspicious circumstances which convinces us that he was, as a matter of fact, not present at the crime scene and has been subsequently introduced to be an eyewitness of the incident. The deliberate and calculated attempt by the informant to introduce and add the names of the accused-appellants stage by stage is manifested from the inherent contradictions between his Fardbeyan (Exh.1), written report (Exh. 5) and the two statements under Section 164 CrPC (Section 183 BNSS) dated 19th May, 1990 and 21st May, 1990, which we have highlighted above [Paras 37 and 38].

[46] Once the testimonies of Rameshwar Sahu (PW3), Tapeshwari Kumari (PW-1) and Saroj Kumari (PW2) are discarded, there remains no evidence whatsoever to connect the accused-appellants with the crime.

E. Evidentiary value of Defence Witness

[47] Jatan Sahu and Khakhandu Sahu were named as eye-witnesses in the subsequent report (Exh. 5) as being the companions of the first informant and the deceased. The prosecution offered no explanation whatsoever for not examining these witnesses in evidence. The defence examined them as DW-1 and DW-2. The witnesses categorically stated that some unknown assailants had assaulted Gajendra and that the appellants were not present at the time of the incident. Neither the trial Court nor the High Court assigned any plausible reason for discarding the evidence of these two witnesses.

[48] It is well settled that the testimony of a defence witness carries the same evidentiary value as that of a prosecution witness. This Court in **State of U.P. v. Babu Ram**, 2000 4 SCC 515 observed as follows:-

"23. Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses."

(Emphasis supplied)

[49] Similarly, in **Munshi Prasad v. State of Bihar**, 2002 1 SCC 351 this Court has clarified that evidence of a witness cannot be discarded merely on the ground that the witnesses were examined by the defence. It was observed as follows:-

"3. Without attributing any motive and taking the evidence on its face value, therefore, it appears that the place of occurrence was at 400-500 yards from the place of Panchayat and it is on this piece of evidence, the learned advocate for the State heavily relied upon and contended that the distance was far too short so as to be an impossibility for the accused to be at the place of occurrence - we cannot but lend concurrence to such a submission: a distance of 400-500 yards cannot possibly be said to be "presence elsewhere" - it is not an impossibility to be at the place of occurrence and also at the Panchayat meet, the distance being as noticed above: the evidence on record itself negates the plea and we are thus unable to record our concurrence as regards acceptance of the plea of alibi as raised in the appeal. Before drawing the curtain on this score, however, **we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution** - a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses."

(Emphasis supplied)

[50] The failure of the prosecution to examine these material eye-witnesses (DW-1 and DW-2) named in the report (Exh. 5), coupled with the fact that the Courts below disregarded their testimony on oath, severely dents the credibility of the prosecution version and strengthens the case of the defence. Their evidence creates a clear doubt regarding the identity of the assailants. In such a situation, the defence version appears more probable, and the benefit of doubt must go to the accused-appellants.

[51] As a consequence of the above discussion, we have no hesitation in holding that the prosecution has miserably failed to fasten the guilt upon the accused-appellants as there is total lack of credible evidence to indict them for the charges. The conviction of the accused-appellants, as recorded by the trial Court and affirmed by the High Court is based on misreading and erroneous appreciation of evidence on record and, hence, the same is unsustainable in facts as well as in law.

Conclusion: -

[52] Hence, the impugned judgment dated 10th February, 2023 rendered by the High Court affirming the judgment dated 30th August, 1994 and order of sentence dated 31st August, 1994 passed by the trial Court is set aside. The appellants are

acquitted of the charges. They are in custody and shall be released forthwith, if not wanted in any other case.

[53] The appeal is allowed accordingly.

[54] Pending application(s), if any, shall stand disposed of

2026(1)MBAJ72

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

(Hon'ble Judge: Vikram Nath; Sandeep Mehta)

Criminal Appeal No 4895 of 2025 **dated 17/11/2025**

Raj Kumar @ Bheema

Versus

State of Nct of Delhi

MURDER DURING ROBBERY

Indian Penal Code, 1860 Sec. 412, Sec. 34, Sec. 396, Sec. 307, Sec. 397 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 82, Sec. 313, Sec. 207, Sec. 83 - Evidence Act, 1872 Sec. 145, Sec. 144, Sec. 27 - Maharashtra Control of Organised Crime Act, 1999 Sec. 3 - Bharatiya Sakshya Adhinyam, 2023 Sec. 148, Sec. 147 - Murder During Robbery - Appeal challenged conviction under Sec. 302 IPC for murder of elderly man during house burglary - Prosecution relied on sole identification by injured witness and recovery of weapon and articles - Appellant contended witness suffered weak eyesight, identification made after long delay and recoveries uncorroborated - Courts below accepted identification as credible and upheld conviction - On scrutiny it found discrepancies and contradictions in evidence of witness, absence of independent corroboration of recovery, non-matching of blood stains, and lack of proof connecting articles to offence - Failure to join independent witnesses and doubtful recovery rendered prosecution story unsafe - Conviction based solely on infirm evidence could not be sustained - Benefit of doubt extended - Appellant acquitted - Appeal Allowed

Law Point: Conviction for murder cannot rest solely on delayed and doubtful identification by a single witness and uncorroborated recovery of articles unconnected with offence - prosecution must prove guilt beyond reasonable doubt with consistent and credible evidence.

Acts Referred:

Indian Penal Code, 1860 Sec. 412, Sec. 34, Sec. 396, Sec. 307, Sec. 397

Code of Criminal Procedure, 1973 Sec. 161, Sec. 82, Sec. 313, Sec. 207, Sec. 83

Evidence Act, 1872 Sec. 145, Sec. 144, Sec. 27

Maharashtra Control of Organised Crime Act, 1999 Sec. 3

Bharatiya Sakshya Adhinyam, 2023 Sec. 148, Sec. 147

Counsel:

Ajay Marwah, Swaroopanand Mishra, Mrigank Bhardwaj, Dhriti Sharma, Rahul Kumar, Sanjay Shukla, Ayush Gupta, Mukesh Kumar Maroria

JUDGEMENT

Sandeep Mehta, J.- [1] Heard.

[2] Leave granted.

[3] The instant appeal is directed against the final judgment and order dated 29th September, 2022, passed by the Division Bench of the High Court of Delhi at New Delhi [Hereinafter, referred to as the "High Court".] in Criminal Appeal No. 281 of 2021, whereby the appeal preferred by the appellant Raj Kumar @ Bheema [Hereinafter, referred to as the "accused-appellant".] came to be dismissed, affirming the judgment dated 12th February, 2021, rendered by the learned Additional Sessions Judge, South East, Saket Courts, New Delhi [Hereinafter, referred to as the "trial Court".]. By the said judgment, while the accused-appellant was acquitted of the charges under Sections 3, 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 [For short, 'MCOCA'.], and Sections 396, 307, 397, 412 read with Section 34 of the Indian Penal Code, 1860 [For short, 'IPC'.], he was convicted for the offence punishable under Section 302 IPC, whereas the remaining co-accused were acquitted. The High Court further affirmed the order on sentence dated 20th February, 2021, whereby the accused-appellant was sentenced to undergo imprisonment for life with a fine of Rs.5,000/-, and in default whereof, to further undergo simple imprisonment for a period of one month.

PROSECUTION CASE

[4] On the intervening night of 2nd/3rd November, 2008, at about 1:50 a.m., an information was received at Police Station, New Friends Colony through wireless operator, regarding an incident of house breaking by night at House No. 81, Sukhdev Vihar, near Escort Hospital, where the intruders were allegedly assaulting the occupants of the premises. At about 2:00 a.m., further information was received at the said Police Station, which was reduced into writing vide DD No. 29A, as per which, Head Constable Bhagirath (PW-7) informed that SI Sanjeev Solanki (PW-17) may be sent to the spot.

[5] Pursuant thereto, SI Sanjeev Solanki (PW-17), accompanied by Constable Ashok Kumar (PW-9), proceeded to the place of occurrence and apprised the Additional S.H.O., who arrived there shortly thereafter. Upon entering the premises, they found the sliding door of the drawing room broken, the side grill bent, the house ransacked, and the household articles scattered. A large pool of blood was noticed in the lobby, where the dead body of an elderly male (deceased-Madan Mohan Gulati)

was lying, alongside certain articles. Bloodstains and articles in disarray were also observed in the adjoining bedroom.

[6] On hearing faint cries emanating from the adjoining bedroom, the police officials rushed inside and found an elderly lady, later identified as Smt. Indra Prabha Gulati (PW-18), lying in an injured condition. She was immediately shifted to AIIMS Hospital by the PCR. Thereafter, SI Sanjeev Solanki (PW-17), accompanied by Inspector S.K. Sharma (PW-15), proceeded to the Trauma Centre, AIIMS, where Smt. Indra Prabha Gulati (PW-18) was under treatment. Medico-Legal Certificate (MLC) [Exh. 21/A.] of the injured, Smt. Indra Prabha Gulati (PW-18) was prepared on 3rd November, 2008, by Dr. Sharwan. The MLC recorded that the injured was fit for statement and noted multiple grievous stab injuries, including blood clots around the nether region, scalpdeep wounds, and a lacerated wound near the right eyebrow. The nature of the weapon used to cause the injuries was opined to be sharp.

[7] Upon being declared fit, the statement (Fard bayan) [Exh. PW-17/A.] of Smt. Indra Prabha Gulati (PW-18) was recorded by SI Sanjeev Solanki (PW-17) and based on the said statement, Inspector S.K. Sharma (PW-15) prepared a rukka and handed it over to SI Sanjeev Solanki (PW-17), pursuant to which an FIR [FIR No. 601/2018 dated 3rd November, 2008.] came to be registered at Police Station, New Friends Colony, for the offences punishable under Sections 394/397/302/307/34 of IPC.

[8] On 5th November, 2008, body of the deceased Madan Mohan Gulati was identified by his son-Vivek Gulati, and by his nephew-Servesh Gulati (son of the deceased's younger brother). The post-mortem examination of the deceased was thereafter carried out, and the post-mortem report was issued wherein the cause of death was opined to be shock and haemorrhage on account of multiple antemortem injuries. The opinion on the weapon of offence (knife/chheni) was also obtained from the doctor.

[9] The accused-appellant was apprehended on 21st November, 2008, based on the description allegedly provided by the injured eye-witness, Smt. Indra Prabha Gulati (PW-18). It is alleged that the accused-appellant gave a disclosure statement [Exh. PW 14/A.], and in furtherance thereof, he led the police party to an open area near bushes situated at Pul Prahladpur, from where a blood-stained Eagle brand pant was recovered from a pit. The pant was duly seized and sealed. On the following day, while the appellant was on police remand, his disclosure led to the arrest of the co-accused persons.

[10] On 25th November, 2008, pursuant to a supplementary disclosure statement [Exh. PW-14/N.], the appellant purportedly led the police party to the bushes near the railway track behind Priyanka Camp, from where one chheni was recovered. The same was also seized and sealed. Thereafter, the accused-appellant also facilitated the recovery of the robbed articles, namely, one idol of Lord Ganesha and a Panasonic CD player, from his Jhuggi.

[11] Shri Vivek Kumar Gulati, son of the deceased and Smt. Indra Prabha Gulati (PW-18) identified the case property in the Test Identification Parade [For short, 'TIP'.] conducted on 6th December, 2008. The proceedings [Exh. PW16/B.] of the TIP were conducted by Shri Devendra Kumar Jangala (PW-16), learned Additional District Judge, West, Tis Hazari Courts.

[12] On 24th December, 2008, TIP was organized in respect of the accused Raj Kumar @ Bheema, Jawahar, Ranbir @ Sintu, and Naeem @ Mota; however, they refused to participate in the same. Upon comparison, the fingerprints of the accused Jawahar and Ranbir @ Sintu were found to tally with the chance prints lifted from the spot. The site inspection plan was prepared, and the material exhibits were forwarded to the Forensic Science Laboratory [For short, 'FSL'.] on 22nd January, 2009. Upon completion of the investigation, chargesheet in connection with the said FIR came to be filed on 2nd February, 2002, against the accused, namely, Raj Kumar @ Bheema, Ramesh Kumar @ Shankar, Naeem Khan @ Mota, Jawahar, and Ranbir @ Sintu, in the Court of the learned ACMM, for offences punishable under Sections 3, 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the MCOCA, and Sections 396, 307, 397, 412 read with Section 34 of IPC. One of the accused, namely, Kastoori, could not be traced out despite best efforts, and proceedings under Sections 82 and 83 of the Code of Criminal procedure, 1973 [For short, 'CrPC'.] were initiated against him and his name was placed in Column No. 2 of the chargesheet. Since the offences were triable exclusively by the Court of Sessions, the learned ACMM, after compliance with the provisions of Section 207 CrPC, committed the case to the Court of Sessions for trial, where charges were framed against the accused. They abjured their guilt and claimed trial.

[13] During the course of trial, the prosecution examined 27 witnesses and exhibited 25 documents in consolidated form to prove the guilt of the accused. The accused Ramesh @ Shankar examined one witness in defence. Upon closure of prosecution evidence, statements of the accused persons were recorded under Section 313 CrPC affording them an opportunity to explain the incriminating material appearing against them. The accused-appellant, in answer to Question No. 82, categorically stated, "I am innocent and have been falsely implicated in the present case. PW-17 Inspector Sanjeev Solanki was known to me prior to the present case, and he has falsely implicated me in this case."

FINDINGS OF THE TRIAL COURT

[14] Upon consideration of the arguments advanced by the prosecution and the defence, and after appreciating the evidence available on record, the trial Court, vide judgment dated 12th February, 2021, acquitted the accused persons other than the appellant Raj Kumar @ Bheema, holding that the case against him stood proved beyond reasonable doubt only for the offence punishable under Section 302 IPC. He was acquitted of the remaining charges. The conviction was primarily based on the testimony of the eye-witness, Smt. Indra Prabha Gulati (PW-18), who identified the appellant during her testimony (recorded over video conferencing) while failing to

identify the remaining accused, coupled with the purported recovery of weapon of offence at the instance of the accused-appellant.

[15] Further, the trial Court, vide order dated 20th February, 2021, directed the accused-appellant to undergo sentence as mentioned hereinabove. [Supra para 3.]

FINDINGS OF THE HIGH COURT

[16] In appeal by the accused-appellant, the High Court affirmed the findings of the trial Court vide judgment [CrI.A. 218/2021.] dated 22nd September, 2022, finding no infirmity in the judgment and order passed by the trial Court, holding that the prosecution case essentially rested upon the identification of the accused-appellant by the injured witness and the recoveries effected at his instance. The High Court rejected the submission advanced on behalf of the appellant that the identification of the appellant by Smt. Indra Prabha Gulati (PW-18) was doubtful as she failed to identify the other accused, on the ground that, insofar as the present accused-appellant was concerned, she was categorical in her testimony that he was one of the assailants.

[17] The High Court observed that non-recovery of the appellant's finger prints from the place of incident would not absolve him of participation in the offence, which stood established by the identification made by the injured victim, Smt. Indra Prabha Gulati (PW-18). It was further noted that pursuant to the disclosure made by the appellant, the pant allegedly worn by him at the time of incident was recovered, on which human blood was detected, and no plausible explanation was forthcoming from the appellant as to the presence of human blood on his wearing apparel. The Court also held that merely because the son of the deceased and the injured victim, who had identified the robbed articles in TIP, did not appear in the witness box to identify the recovered articles, would not discredit the rest of the evidence led by the prosecution, which was sufficient to prove the guilt of the appellant for the offence alleged, beyond reasonable doubt.

[18] Aggrieved, the accused-appellant is before us in the present appeal by way of special leave.

Submissions on behalf of accused-appellant

[19] Learned counsel for the appellant, vehemently and fervently urged that the High Court fell in grave error in affirming the conviction of the accused-appellant recorded by the trial Court, which is wholly unsustainable in law. It was contended that the prosecution case rests entirely upon the testimony of the old and infirm witness Smt. Indra Prabha Gulati (PW-18), who was admittedly suffering from weak eyesight. Accordingly, her testimony is riddled with inconsistencies and is far too unconvincing so as to form the sole basis for upholding a conviction for an offence punishable with capital punishment.

[20] It was further contended that Smt. Indra Prabha Gulati (PW-18) identified the appellant in Court through video conferencing on 8th May, 2017, after an inordinate delay of nearly eight and a half years from the incident dated 2nd November, 2008,

while notably failing to identify any of the other accused. It was urged that in his statement under Section 313 CrPC, the accused-appellant specifically alleged that PW-18 had been tutored, as his photographs had already been shown to the witness prior to her deposition.

[21] It was averred that there were material contradictions and improvements in the testimony of PW-18. In her initial statement under Section 161 CrPC, she mentioned that the assailants were armed with "knives, screwdriver, and rods," but made no reference to a "chheni." The introduction of the "chheni" for the first time during her sworn testimony recorded after a lapse of more than eight years was a material improvement, evidently tailored to align with the alleged recovery. Moreover, she failed to identify any of the co-accused, all of whom were acquitted, rendering her solitary identification of the appellant highly doubtful.

[22] Learned counsel urged that the prosecution placed reliance upon the alleged recoveries of a bloodstained pant, a "chheni," and articles such as a Ganesh idol/CD player at the instance of the accused-appellant. The first recovery attributed to the accused-appellant was allegedly made pursuant to his disclosure statement from an open area near bushes at Pul Prahladpur, wherefrom a blood-stained pant was recovered. The prosecution alleged that the said pant had been worn by the appellant at the time of the incident. However, the blood-stains detected on the garment did not test positive for the blood group lifted from the scene of occurrence. It was thus contended that the said article could not be connected with the present case, even after forensic examination [Ex. PW-24/B read with Ex. PW-24/A.].

[23] It was further urged that the said recovery cannot be read in evidence under Section 27 of the Evidence Act, 1872 inasmuch as in his disclosure statement [Exhibit PW 14/A.] dated 21st November, 2008, the accusedappellant did not state that he could get the article recovered from an open place near Pul Prahladpur, which, in any event, was accessible to all and sundry. The learned counsel urged that all the recoveries were made without any independent witness being associated to corroborate the same. It was further averred that the alleged weapon of offence, namely the "chheni," was shown to have been recovered after a lapse of 22 days from bushes near a railway track. The said article was never shown to Smt. Indra Prabha Gulati (PW-18) for identification, no photographs were taken at the time of recovery, and no independent witness was associated in the process.

[24] Placing reliance on the judgment of this Court in **Koppula Jagdish v. State of Andhra Pradesh**, 2005 12 SCC 425. learned counsel further urged that the High Court failed to appreciate that the appellant was wrongly convicted for the offence under Section 302 IPC simpliciter, inasmuch as no separate charge under Section 302 IPC was framed against him. It was pointed out that in the present case, all the accused were charged under Sections 394, 397, 302, 307, read with 34 IPC, and except for the appellant, all other co-accused have been acquitted.

[25] It was also urged that Shri Vivek Gulati, son of the deceased, who had identified the robbed articles during the TIP, did not appear in the witness box during the trial to prove and identify the articles allegedly recovered at the instance of the accused-appellant, and hence, no adverse inference ought to be drawn against the appellant on this count.

[26] He, thus, implored the Court to accept the appeal and set aside the impugned judgment(s).

Submissions on behalf of respondent-State

[27] Per contra, Shri Vikramjeet Banerjee, learned Additional Solicitor General, supported the impugned judgment and urged that the appellant Raj Kumar @ Bheema was correctly identified by the injured eye-witness, Smt. Indra Prabha Gulati (PW-18), in her examination-in-chief as well as in her cross-examination, as the person armed with a "chheni" and a rod, who inflicted blows upon her and her husband, resulting in the death of the latter. It was further submitted that the said weapons were recovered from the appellant pursuant to his disclosure statement, thereby corroborating the version of the injured witness Smt. Indra Prabha Gulati (PW-18).

[28] It was further contended that, as per the opinion rendered by Dr. Arvind Kumar (PW-1) with regard to the weapon of offence, Exhibit V, i.e., the recovered "chheni," could be one of the weapons used in the offence and that injuries marked B, C, and D on the person of injured Smt. Indra Prabha Gulati (PW-18) were possible by the said weapon.

[29] The conduct and antecedents of the appellant, including his status as a history-sheeter, repeated involvement in criminal cases, and acts of misconduct during incarceration, clearly reflect a persistent pattern of unlawful behaviour. Considering the heinous nature of the offence, being the murder (for gain) of a senior citizen, the accused-appellant does not deserve any indulgence, and the gravity of the crime and the attendant circumstances warrant dismissal of the appeal filed on his behalf.

[30] He thus implored the Court to dismiss the appeal, urging that the High Court had rightly affirmed the conviction of the accused-appellant and the sentence awarded to him by the trial Court. It was further urged that upon an independent and comprehensive appraisal of the evidence on record, including the consistent testimonies of Investigating Officer Shri S.K. Sharma (PW-15) and Smt. Indra Prabha Gulati (PW-18), both the trial Court and the High Court had recorded concurrent findings that the prosecution had proved its case beyond reasonable doubt, and hence no interference is warranted in the impugned judgment.

Discussion and Analysis

[31] We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments, the material available on record, as well as the written submissions filed on behalf of both sides.

[32] Since the appellant seeks reversal of concurrent findings of fact recorded by the trial Court as well as the High Court, this Court is required to tread with circumspection. It has been consistently held by this Court in a catena of decisions that unless the findings are shown to be perverse or rendered in disregard of material evidence, this Court would be slow in interfering with concurrent conclusions of the Courts below. Reference in this regard may be made to the decision of this Court in the case of **Mekala Sivaiah v. State of Andhra Pradesh**, 2022 8 SCC 253. the relevant para of which is quoted hereinbelow:

"15. It is well settled by judicial pronouncements that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. **Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.**"

(Emphasis is supplied)

[33] Keeping the aforesaid principle in mind, this Court would proceed to consider the appeal at hand to examine whether there is some manifest error or illegality in the impugned judgment, and if any grave and serious miscarriage of justice has been occasioned on account of misreading or ignoring of material evidence in the present case.

[34] Evidently, on a perusal of the judgments under challenge and upon considering the submissions advanced by learned Standing Counsel for the State, it emerges that primarily three circumstances have been relied upon by the prosecution to bring home its case against the appellant:

- i. The identification of the appellant in Court by the prosecution witness Smt. Indra Prabha Gulati (PW-18) during her sworn testimony.
- ii. The refusal of the appellant to participate in the TIP, leading to an adverse inference being drawn against him.
- iii. Recovery of weapon of offence stained with human blood.

A. Identification by the Sole Eye-Witness

[35] It is undisputed that the fulcrum of the prosecution case is based on the testimony of Smt. Indra Prabha Gulati (PW-18). Thus, for the sake of ready reference, we quote the entire deposition of the said witness below: -

"ON S.A.

On 03.11.2008 I was present in my house at 81 Sukhdev Vihar, New Delhi. It was the intervening night of 2nd and 3rd November, 2008 and time was 11.30/11.45pm. I and my husband heard the noise of falling of utensils. My husband went to see the same. **I also followed him and we saw five persons**

had entered into our house from the door of drawing room. Out of those, one/two persons were in the kitchen and four persons came through door of drawing room. They were having chheni, screwdriver and knives in their hands. They asked for keys from my husband. We told them to wait and the **one boy who came from drawing room and was having iron rod and chheni in his hands, gave the blow from the iron blow on the head of my husband. He fell down. I was also given blow and became unconscious. I do not remember now by whom the blow was given.** I remained in the hospital for about two months. Someone called the police and I was taken by the police to the hospital. I am having an 8 inch cut on my stomach. I remained in Trauma Center. I was also having bandage on my head and it might be possible that blow was given on the head also. I made statement to the police in the hospital itself. It was given orally whatever was in my memory as I was on hospital bed.

I remained in Moolchand Hospital for one month and 10 days. I never met with the police for this case after my discharge from the hospital. I have never seen those boys who came into my house thereafter.

At this stage, scanned image of signatures on statement is shown to the witness through videolink and after seeing it the witness states that the same pertains to her which are at point A. I can identify the accused if shown to me.

At this stage, accused persons who are facing charges in this case, are shown through audio-video link one by one and after seeing accused the witness states that he is the same boy who was having chheni and rod and was giving blows to my husband. (The name of accused is Raj Kumar).

Next accused is shown and after seeing him the witness states that she is not remembering complete and she is remembering face of only one as she became unconscious. (The name of accused is Ranbir).

Next accused is shown and after seeing him the witness states that she does not know anything about him. (The name of accused is Jawahar).

Next accused is shown and after seeing him the witness states that she is remembering somehow and it was 12.00midnight and 8 years have passed she is not remembering further. She further states that she cannot say whether he was among those persons or not. (The name of accused is Naeem)

Next accused is shown and after seeing him the witness states that the boy shown first be stand with him so that she may identify again. The accused Raj Kumar is shown with this accused to the witness. After seeing the accused Raj Kumar, the witness states that he is one among those boys but she is not sure about second boy.

(The name of second boy is Ramesh Kumar).

XXN by Sh. Sunil Dutt, Ld. Addl. P.P for the State.

It is correct that when my husband fell down after blows given to him, I was also given rod blows and knife blows.

I do not remember that I fell down in Angan as I was unconscious. I was told by the police officials that I was taken to the room by the boys dragging me. I do not know that they after breaking open the almirah in the room took away Rs.20000/- and the jewellery articles. I do not remember whether I raised noise or not or that I remained lied on the floor of the room. (Vol. I regained my consciousness in the Trauma Center). It is wrong to suggest that the number of boys who entered into the house was 3-4. (Vol. They were five in number).

I did not go to Patiala House Court on 26.12.2008. (Vol. My son went to Patiala House court as I was ill). It is wrong to suggest that in the Patiala House Court I identified four boys as Raj Kumar @ Bheema, Ranbir @ Shintu, Jawahar and Naeem @ Mota and stated to the police that they were the boys who gave blows to my husband and me in my house and took away cash and jewellery from my house. (Vol. I did not go to PHC only my son went there).

XXN by Sh. Mihi Lal Chaudhary, counsel for accused Jawahar.

As far as I remember I regained consciousness after three/four days in the Trauma Center and at that time I was on ventilator.

XXN by Sh. S.M. Sallauddin, counsel for accused Raj Kumar and Naeem, XXN by Sh. V.P Kaushik, counsel for Ramesh Kumar, and XXN by Sh. Sallauddin Khan, counsel for accused Ranbir.

I do not remember the date when police met me for the first time and the last time.

I cannot tell the name of the police official by whom my statement was recorded. It was recorded in the hospital. The signatures were taken in the hospital and I do not remember now whether it was in Trauma Center or Moolchand. At that time police officials were present and my son was also present. My son and daughter met me in the Trauma Center. I do not remember the date when they came to me in the Trauma Center. It may be 4th or 5th. As far as I remember I left India on 27.12.2008. I do not remember whether my statement was written as I told or not. (Vol. Due to the incident I was unconscious and was not fit completely). I do not remember how many pages were got signed by me from the police. I do not remember whether I signed any blank paper or not. If my signatures were taken it might be that something was written on the papers then my signatures were taken. I do not remember whether the writing were in hindi or english language. **The witness is confronted with the statement Ex.PW17/A and is asked that in the same 'Chheni' word is not mentioned in the same. I do not remember**

about the colour of the screwdriver. I do not remember what was the length of the iron rod. The accused Raj Kumar was worn black shirt. I do not remember about the clothes of remaining boys.

I do not remember the name of tenant of that time. He was from Hyderabad. He was in the premises for about 2/2 1/2 years prior to incident. They vacated the premises after the incident as they were also afraid. I do not remember whether the verification of the tenant was got conducted from police or not. We were not having permanent servant or chowkidar at that time but however, Kamla was part-time domestic helper. She was working for the last 15 years. She was residing in a room taken on rent in the Sukhdev Vihar. Her husband was residing with her occasionally. I do not know name of her village. (Vol. She had told me but due to my age I have forgotten the same).

I retired on 28.02.1997. It is correct that Kamla was residing in the jhuggi of Sukhdev Vihar. It is correct that in my presence no inquiries were made from Kamla and her husband not their statement was recorded in my presence. The tenant has vacated my premises before I discharge from hospital. I do not know whether inquiries were made by the police from my tenant in my presence. **At the time of incident, I was using spectacles occasionally as I was having long sight (dur ki nazar kamzor thi). At present I use the spectacles whenever I have to do some work of near distant. At present I am not wearing contact lenses.** It is correct that I did not receive injury on my head and I received injury on my right side of forehead. I cannot say whether there was any stitching on the forehead or not but there was a bandage. I do not remember the number of lenses which I was using at that time.

The Counsel wants to contradict the witness with her statement Ex.PW17/A that in the same there is no description about the clothes and physique of the boys. (it will be looked by the court during the arguments as the witness is being recorded through videoconferencing). It is wrong to suggest that police did not take any statement from me and my signatures were taken on a blank paper. I never visited police station in respect of this case. **I was shifted from Trauma Center to Moolchand after 20 days. I was discharged from Moolchand hospital on 24 ?r 25.12.2008. I did not go to police after 25.12.2008. Police have not met me after 25.12.2008 till I left India.** I do not remember how many times police met me while I was in Trauma Center. Perhaps, once or twice they met me. During those visits inquiries were made from me about the manner of the incident and the assailants. **I do not remember the date when I regained my consciousness. As far as I remember police did not come to me while I was in Moolchand Hospital.**

I do not know the name of chowkidar as it was kept by my son after the incident. It is wrong to suggest that the boy who has been identified by me

today i.e. Raj Kumar was not involved in the incident or that I have been shown the photographs by the police.

The co-assailants were calling him "Bhima aur maar, bhima aur maar to him". It is wrong to suggest that my counsel has sent photograph of Bhima to me and after seeing him I am identifying him today. It is wrong to suggest that my counsel has tutored me on telephone and upon tutoring I am deposing today or that copy of the statements has been sent to me and after going through the same I have deposed today. It is wrong to suggest that the dossier of Bhima with the police has been sent to me by the counsel. It is wrong to suggest that Bhima was not involved in the incident occurred in the intervening night of 2nd and 3rd November, 2008 or that I am naming him at the instance of police.

Dated: 8th May, 2017."

(Emphasis supplied)

[36] Based upon the testimony, it is clear that the witness Smt. Indra Prabha Gulati (PW-18) had shifted to the United States of America immediately after the incident, and her statement came to be recorded through video conferencing on 8th May, 2017, i.e., after a gap of eight and a half years from the occurrence. She stated that out of the five assailants who had entered the house, one or two went towards the kitchen, while four entered through the drawing room door. They were armed with a chheni, screwdriver, and knife, and demanded the keys from her husband. Upon his request for some time, one of the assailants, who was carrying an iron rod and a chheni, inflicted a blow on the head of her husband, who collapsed. She too was given a blow, though she could not recollect as to who had inflicted the injury. She further stated that she remained admitted in Moolchand Hospital for about one month and ten days. She categorically asserted that she never saw the assailants thereafter and that she neither met the police nor did she go to the Patiala House Courts after being discharged.

[37] The Public Prosecutor requested the witness to identify the accused on the video display and from amongst the accused present in the dock, who were shown to the witness, she identified the accused- appellant as the assailant who was armed with a chheni and a rod and who had inflicted blows upon her husband.

[38] The witness further stated that she could remember the face of only one accused, as she had become unconscious, and thus she was unable to identify any of the other assailants who were presented for identification. The learned Public Prosecutor sought permission of the Court to crossexamine the witness on the ground that she was not narrating complete facts disclosed during investigation. However, in response to the suggestions of the Public Prosecutor, she gave discrepant answers.

[39] To a material suggestion, the witness replied: "I did not go to Patiala House Court on 26.12.2008" and volunteered that her son had gone to the Court as she was unwell. She denied the suggestion that she had identified four boys, namely Raj

Kumar, Ranbir, Jawahar, and Naeem @ Mota, in the Patiala House Court and affirmed to the police that they were the assailants who inflicted blows on her husband and looted cash and jewellery from the house.

[40] In her cross-examination, the witness stated that she had left India on 27th December, 2008. She admitted that she could not recollect whether her statement had been recorded in the manner she had spoken. She volunteered that owing to the assault, she became unconscious and was not fully fit. She further stated that the accused-appellant Raj Kumar was wearing a black shirt, but she could not recollect the clothes of the other assailants.

[41] Learned defense counsel sought to confront and contradict the witness with reference to her previous statement [Exh PW-17/A.] under Section 161 CrPC on the aspect that there was no description of the clothes or physique of the assailants in such statement. The trial Court observed that the effect of such omission/improvement would be considered at the stage of final arguments, since the witness was being examined through video conferencing. The witness further stated that she was discharged from Moolchand Hospital on 24th/25th December, 2008, and that she did not go to the police after 25th December, 2008. She was confronted with a pertinent suggestion that the police had shown her the photographs of Raj Kumar and that her counsel had also seen the photograph and tutored her for identifying the appellant, which she denied.

[42] We must take note of and resolve a very important feature being a procedural irregularity which has arisen in this case. As would be evident from the discussion made hereinabove, the evidence of the star prosecution witness Indra Prabha Gulati (PW-18) was recorded through video conferencing because she had in the intervening period shifted to Canada.

[43] During the course of cross-examination, the defence tried to confront the witness (PW-18) with her previous statement so as to elicit a contradiction/highlight an omission. However, the trial Court observed that this objection would be considered at the time of final adjudication because the witness (PW-18) was not present before the Court and the document being the previous statement in writing could not be shown to her (supra).

[44] However, on going through the trial Court's judgment, we do not find any discussion made regarding this pertinent objection by the defence.

[45] The Evidence Act/ Bharatiya Sakshya Adhinyam, 2023 provide the procedure for evidence as to the matters in writing and cross-examination as to previous statements in writing. Section 147 of the BSA (144 of the Indian Evidence Act and Section 148 of the BSA (Section 145 of the Indian Evidence Act) are reproduced hereinbelow for the sake of convenience: -

"147. Evidence as to matters in writing. Any witness may be asked, while under examination, whether any contract, grant or other disposition of

property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. Explanation. A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant fact.

148. Cross-examination as to previous statements in writing. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

[46] A plain reading of the above provisions would make it clear that wherever questions are required to be put as to the matters in writing/previous statements in writing, the attention of the witness must be drawn to the document/statement itself. Thus, a question would arise as to how this procedure would be followed in cases where the evidence of the witness is being recorded over video conferencing.

[47] In this age of advancement of technology, instances are galore where, the evidence of witnesses are being recorded over video conferencing. In such circumstances, none of the parties should be put to a dis-advantage merely because the witness is not in attendance before the Court, and the document/previous statement in writing with which such witness is sought to be confronted, cannot be shown/put to him.

[48] Therefore, we hereby clarify and direct that in every case where, it is proposed to record the statement of a witness over video conferencing and any previous written statement of such witness or a matter in writing is available and the party concerned is desirous of confronting the witness with such previous statement/matter in writing, the trial Court shall ensure that a copy of the statement/document is transmitted to the witness through electronic transmission mode and the procedure provided under Section 147 and Section 148 of the Bharatiya Sakshya Adhiniyam (corresponding Section 144 and Section 145 of the Evidence Act) is followed in the letter and spirit, so as to safeguard the fairness and integrity of the trial.

[49] This direction is being issued with a view to avoid procedural irregularities and to prevent disadvantage to any party before the Court, and also to uphold the principles of fair trial, effective crossexamination, and proper appreciation of evidence.

[50] From the statement of the witness, the following material facts emerge:

(a) She identified the accused-appellant in Court while being examined through video conferencing, nearly eight and a half years after the incident.

(b) She admitted that she had been discharged from Moolchand Hospital on 24th or 25th December, 2008.

(c) She used to wear spectacles as her distance vision was weak. At the time of dock identification, the witness was not wearing spectacles.

(d) Not even a bare suggestion was put to her by the Public Prosecutor that she had been taken to the police station or jail for TIP proceedings. Most material is the fact that the witness emphatically denied the suggestion of the Public Prosecutor that she had gone to the Court on 26th December, 2008, and identified the assailants.

Identification in Court after delay Unsafe and Improbable

[51] It is trite that the evidence of an eye-witness must be of sterling quality and unimpeachable character. It should not only inspire the confidence of the Court but must also be of such a nature that is acceptable at its face value.

[52] We may note that the possibility of identification of the accused-appellant by Smt. Indra Prabha Gulati (PW-18) in Court, after a lapse of nearly eight and a half years from the incident, is extremely unlikely. In her testimony, the witness candidly admitted that her distance vision was weak and that she could not see objects at a distance without spectacles. It is also borne out from the record that even at the time of the incident, she was aged about 73 years and was infirm. She was not wearing spectacles at the time of her deposition via video conferencing. In this background, her purported identification of the assailant after such a long lapse of time, that too over video conferencing, does not inspire confidence.

[53] Furthermore, when a suggestion was put to the witness by the Public Prosecutor in cross-examination as to whether she had gone to the Patiala House Courts for identifying the four assailants, the witness emphatically denied the same.

[54] In her cross-examination, the witness Smt. Indra Prabha Gulati (PW-18) stated that the accused-appellant Raj Kumar @ Bheema was wearing a blackcoloured shirt, which is an improvement introduced for the first time after nearly eight and a half years. This appears to be one of the probable reasons for her identification of the accused-appellant. No identifying feature of the assailants was disclosed in her previous statement [Exh. PW-17/A.] recorded under Section 161 CrPC, wherein no physical description of the accused persons or clothes worn by them at the time of the incident was mentioned. Such an embellishment casts a serious doubt on the reliability of her dock identification and is suggestive of a clear attempt to fill critical lacunae in the prosecution case.

[55] In assessing the credibility of a witness, the testimony must inspire confidence in the judicial mind, and omissions, improvements, or contradictions touching the core of the prosecution version inevitably undermine such assurance. This Court has consistently held that minor discrepancies are not fatal, but material improvements that go to the root of the matter essentially erode the credibility of the witness.

[56] In view of the aforesaid glaring facts emerging from the testimony of Smt. Indra Prabha Gulati (PW18), it would be unsafe to place reliance on her evidence regarding the identification of the accused. Once her identification of the accused-appellant in Court is discarded, no substantive evidence remains on record to connect the accused with the crime.

B. Glaring Infirmities in the Test Identification Proceedings

[57] The trial Court, as well as the High Court, drew an adverse inference against the accused-appellant on the ground that he declined to participate in the TIP. However, the fact remains that the very sanctity of the TIP stands under a serious cloud of doubt when it is manifest that Smt. Indra Prabha Gulati (PW-18) did not go for participating in any such identification parade.

[58] In this context, it would be essential to advert to the prosecution case regarding the effort made by the Investigating Officer to get the appellant subjected to the TIP.

[59] It is the case of the prosecution that the accused was arrested on 21st November, 2008. On perusal of the arrest memo [Exh. PW- 14/B.], it is apparent that there is no mention in the document that the face of the accused was kept baparda (muffled) after his arrest. A doubt on the prosecution case on identification thus arises from this very stage.

[60] The evidence of the first Investigating Officer Shri S.K. Sharma (PW-15), who effected the arrest of the accused-appellant on 21st November, 2008, has been carefully examined. The Investigating Officer (PW-15), though, stated in his deposition that at the time of the arrest of the accused-appellant Raj Kumar @ Bheema, his face was kept muffled. However, this assertion stands contradicted by the arrest memo, which contains no such recital.

[61] The Investigating Officer further stated that the accused-appellant was interrogated and, in furtherance thereof, recoveries were effected vide memoranda Exh. PW-14/D, Exh. PW-14/O, Exh. PW-14/P, and Exh. PW-15/H. A careful scrutiny of these memoranda would show that there is no reference therein that the face of the accused was muffled at the time of the recovery proceedings. This significant omission lends support to the plea taken by the accused-appellant during the TIP and in his statement under Section 313 CrPC that he had already been shown to the witness, and his photographs had been taken by the Investigating Officer, which were later used for dock identification.

[62] It is trite that where the witnesses have had an opportunity to see the accused prior to the holding of the TIP, the evidentiary worth of such proceedings stands considerably diminished. It is the duty of the prosecution to establish beyond doubt that right from the time of arrest, the accused was kept baparda to rule out the possibility of his face being seen before the identification proceedings are conducted. If the witnesses have had any opportunity to see the accused before the TIP whether

physically or through photographs the credibility and sanctity of the identification proceedings would stand seriously compromised.

[63] Another material infirmity in the prosecution case relates to the procedural aspects of the TIP. From the evidence of Smt. Indra Prabha Gulati (PW18), it is evident that she categorically stated that she was discharged from Moolchand Hospital on 24th/25th December, 2008. She did not utter even a single word to suggest that she had been taken to prison or any Court for participating in any such proceedings. Further, the witness was emphatic in stating that neither did she meet the police nor did she visit the Patiala House Courts after being discharged from the hospital. It is also pertinent to note that no document pertaining to the treatment or discharge of Smt. Indra Prabha Gulati (PW-18) was proved on record by the prosecution. Consequently, a grave doubt arises regarding the very possibility of any TIP proceedings having been conducted in the presence of the witness Smt. Indra Prabha Gulati (PW-18) on 24th December, 2008.

[64] This conclusion gets support from the evidence of the ACMM, Smt. Surya Malik Grover (PW-12), who, in her deposition, only stated that the Investigating Officer informed her that the identifying witness was standing outside. Significantly, there is no signature of the identifying witness Smt. Indra Prabha Gulati (PW-18) on any of the documents prepared in connection with the TIP.

[65] In this view of the matter, the prosecution version that efforts made to subject the accused to TIP failed on account of their refusal, stands refuted. While the refusal of the appellant to participate in the TIP may, prima facie, invite an adverse inference, mere such inference cannot support the theory of identification when the very authenticity of the TIP is under a serious cloud of doubt. When it stands established from the record that the TIP attempted by the prosecution was fundamentally flawed, and a doubt is created that the identifying witness herself may not even have been present to participate therein, the very foundation of the identification proceedings falls flat to the ground.

[66] Furthermore, in such circumstances and considering the significant improvements made by Indra Prabha Gulati (PW-18) from her previous police statement on the aspect of identifying features (black shirt), the dock identification of the accusedappellant made by the injured witness, Smt. Indra Prabha Gulati (PW-18), during the course of her evidence through video-link, recorded nearly eight and a half years after the incident would be unsafe to rely upon.

C. Recoveries and Non-identification of Articles

[67] In addition to the above, the prosecution placed reliance on the alleged recoveries of looted articles at the instance of the accused. However, it is pertinent to note that Smt. Indra Prabha Gulati (PW-18) was not made to identify the said articles during her testimony. Furthermore, Vivek Gulati, son of Smt. Indra Prabha Gulati (PW-18), who is stated to have identified the articles in the TIP, was not examined

during the trial. Consequently, the alleged recoveries lose their evidentiary worth and cannot be relied upon, as there is no credible proof that they are the looted articles.

[68] The prosecution has tried to claim that the accused-appellant could not offer any explanation for the presence of human blood on the pant recovered at his instance, [Exh. PW-14/D.] which he had allegedly worn at the time of the incident, which circumstance is incriminating. However, indisputably, the blood stains on the pant could not be matched with the blood sample lifted from the scene of occurrence or with the blood group of the deceased or the injured victim, as the Serology report [Exh. 24/B.] recorded "no reaction" in respect of blood grouping for Exh. 20 (Pant). On this count alone, guilt cannot be fastened upon the appellant, as the recovery by itself is not sufficient to prove the case beyond reasonable doubt. The mere availability of human blood on an article is not sufficient unless it is further corroborated by a matching blood group with that of the deceased.

[69] Once the identification of the accused by Smt. Indra Prabha Gulati (PW-18) is discarded, and the recovery of articles cannot be connected either with the crime or with the accused, no substantive or credible evidence remains on record to link the accused with the offence.

CONCLUSION

[70] In view of the discussion made hereinabove, the impugned judgments do not stand to scrutiny. The appeal is, thus, allowed.

[71] The judgment dated 29th September, 2022, passed by the High Court, as well as the judgment of conviction dated 12th February, 2021, and the order of sentence dated 20th February, 2021, passed by the trial Court, are hereby set aside.

[72] The accused-appellant is acquitted of the charges. He has remained in custody for almost 15 and a half years and shall be released from prison forthwith, if not wanted in any other case.

[73] Pending application(s), if any, shall stand disposed of

2026(1)MBAJ89

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: A S Gadkari; Ranjitsinha Raja Bhonsale)

Criminal Appeal (St) No. 12301 of 2024 dated 04/12/2025

Hany Babu

Versus

National Investigation Agency; State of Maharashtra

BAIL UNDER UAPA

Indian Penal Code, 1860 Sec. 124A, Sec. 201, Sec. 34, Sec. 153A, Sec. 121, Sec. 505, Sec. 121A, Sec. 120B, Sec. 115 - Code of Criminal Procedure, 1973 Sec. 439 - Unlawful Activities (Prevention) Act, 1967 Sec. 39, Sec. 13, Sec. 16, Sec. 20, Sec. 18B, Sec. 17, Sec. 38, Sec. 18A, Sec. 18 - National Investigation Agency Act, 2008 Sec. 21 - Bail under UAPA - Appeal under Section 21 of NIA Act challenging rejection of bail for offences under IPC and UAPA - Appellant detained for over five years without trial - Discharge application pending - Large volume of evidence and numerous witnesses - Several co-accused already granted bail - Prosecution opposed citing seriousness and non-completion of half sentence period - Court relied on Supreme Court principles recognizing right to speedy trial under Article 21 - Prolonged incarceration without progress of trial justified bail despite statutory restrictions - Observed that delay of years defeats object of justice and prolonged custody cannot substitute punishment - Bail granted on conditions ensuring cooperation in trial - Appeal Allowed

Law Point: Constitutional courts can grant bail under UAPA where trial delay is excessive and incarceration prolonged; statutory bar under Section 43-D(5) yields to fundamental right to speedy trial under Article 21

Acts Referred:

Indian Penal Code, 1860 Sec. 124A, Sec. 201, Sec. 34, Sec. 153A, Sec. 121, Sec. 505, Sec. 121A, Sec. 120B, Sec. 115

Code of Criminal Procedure, 1973 Sec. 439

Unlawful Activities (Prevention) Act, 1967 Sec. 39, Sec. 13, Sec. 16, Sec. 20, Sec. 18B, Sec. 17, Sec. 38, Sec. 18A, Sec. 18

National Investigation Agency Act, 2008 Sec. 21

Counsel:

Dr Yug Mohit Chaudhry, Anush Shetty, Anil C Singh, Chintan Shah, Sandeep Sadawarte, Adarsh Vyas, Rma Gupta, Krishnakant Deshmukh, Rajdatt Nagre, Ajay Patil, Pravin Ingawale, Vishal Gaikwad

JUDGEMENT

A.S. Gadkari, J.- [1] This is an Appeal under Section 21(4) of the National Investigation Agency Act, 2008 (for short 'NIA Act') by the Original Accused No.12, impugning the Order dated 14th February 2022, passed below Exh. 535, in NIA Special Case No.414 of 2020, by the learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai. By the impugned Order, the Application for bail filed by the Appellant under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the offences punishable under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 115, 120-B, 201 read with 34 of the Indian Penal Code, 1872 and Sections

13, 16, 17, 18, 18-A, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967, has been rejected by the trial Court.

[2] Record reveals that, against the said Order dated 14th February 2022 passed below Exh.535, the appellant had filed Criminal Appeal No.351 of 2022 before this Court. The co-ordinate Bench by its Judgment dated 19th September 2022, dismissed the said Appeal. The said Judgment dated 19th September 2022, was assailed by the Appellant before the Hon'ble Supreme Court by filing Petition(s) for Special Leave to Appeal (Cri.) No(s). 1596 of 2024. As in the intervening period there was change of circumstance, the learned counsel appearing for the Appellant did not press the said Appeal by submitting before the Hon'ble Supreme Court that, the Appellant would approach the High Court for an appropriate remedy. The Hon'ble Supreme Court by its Order dated 3rd May 2024, dismissed the said Special Leave to Petition as not pressed for. The Appellant thereafter filed present Appeal on 10th June 2024. By an Administrative Order dated 3rd March 2025, the Hon'ble the Chief Justice was pleased to assign the Appeal to this Bench.

2.1) After service of notice upon the Respondent No.1, Mr.Anil Singh, learned Additional Solicitor General of India appeared on 2nd May, 2025 and raised preliminary objections about the maintainability of this Appeal. The objections raised by learned A.S.G. Mr. Singh and the submissions on behalf of the Appellant by learned counsel Dr.Chaudhry, have been recorded in Order dated 2nd May, 2025.

2.2) In view of the observations of this Court in paragraph No.5 of Order dated 2nd May 2025, the Appellant had preferred Miscellaneous Application No.1208 of 2025 in SLP (CRL) No.1596 of 2024, before the Hon'ble Supreme Court. By its Order dated 16th July, 2025, the Hon'ble Supreme Court disposed off the said Miscellaneous Application. Paragraph No.2 of the said Order reads as under:-

"2. We do not find any substance in this application and the same is, accordingly, dismissed leaving it open for the applicant/petitioner to take his remedies either before the High Court or before the trial Court or may seek revival of the Special Leave Petition."

[3] In this background learned counsel for the Appellant requested this Court to hear this Appeal. Mr.Singh, learned Additional Solicitor General of India, with the usual fairness at his command acceded to the request of the Appellant for hearing of the Appeal before the High Court.

[4] Heard Dr.Chaudhry, learned counsel for the Appellant, Mr.Singh, learned Additional Solicitor General of India for the Respondent No.1-N.I.A. and Mr.Patil, learned APP for the Respondent No.2-State. Perused entire record and the Affidavit in Reply filed by the Superintendent of Police, N.I.A. Mumbai Branch.

[5] Dr.Chaudhry, learned counsel for the Appellant submitted that, the Appellant is seeking his enlargement on Bail mainly on the ground of prolonged incarceration at pretrial stage or without trial and not on merits. He submitted that, the co-accused i.e.

Sudhir Dhawale (A-1) and Rona Wilson (A-2) have been released on Bail on the said ground by this Court. He submitted that, as of today 9 accused persons in the said crime have been granted bail either by the Hon'ble Supreme Court or by the High Court and therefore the Appellant is entitled to be released on bail on the ground of parity also.

Dr. Chaudhry, submitted that, the Appellant as of today is 54 years old. That, he is a distinguished scholar in the filed of linguistics with a doctorate from the Central Institute of English and Foreign Languages, Hyderabad. That, at the time of his arrest the Appellant was a Professor at Delhi University. The Appellant has no criminal antecedent at his discredit.

Dr. Chaudhry, submitted that, the charge-sheet/record of the present case is voluminous, having about 20000 pages in 54 volumes. The prosecution has cited approximately 363 witnesses in support of its case. The discharge application filed by the Appellant is pending for adjudication before the trial Court for more than 3 years. He submitted that, the Advocate for the Appellant initially advanced his arguments on discharge Application on 15th December, 2022 i.e. about 2 years and 9 months ago. That, the said Application was reargued on 19th June 2025, after change of the learned Special Judge. The prosecution is yet to reply on the said application for discharge. He submitted that, the trial of the present case will take substantially long period and may be a decade to complete. He submitted that, the Hon'ble Supreme Court by its Order dated 18th August 2022, in the case of Vernon Vs. State of Maharashtra, Petition(s) for Special Leave to Appeal (Cri.) No(s).5423 of 2022, had initially directed the learned Judge of the trial Court to decide the Applications for discharge within 3 months from passing of the said Order, however the same could not be done. That, the learned Judge of the trial Court thereafter sought extension of one year for deciding the said Applications, however till date the application for discharge of the Appellant is not decided. He therefore submitted that, the Appellant be released on bail during the pendency of the trial on the afore-noted grounds.

[6] Mr. Singh, learned Additional Solicitor General of India submitted that, merely because the Appellant is behind bars for about 5 years and 3 months itself cannot be a ground for releasing him on Bail. He submitted that, in the case of co-accused Vernon, the Hon'ble Supreme Court has also considered the merits of the matter. That, the co-accused who have been released on bail either by Hon'ble Supreme Court or by this Court had approximately completed 6 years and therefore the principle of parity cannot be made applicable to the Appellant who is yet to complete the said period. Mr. Singh submitted that, mere prolonged incarceration itself is not a ground for granting bail and an application for bail must be considered on merits also. He submitted that, in the case of Gurwinder Singh Vs. State of Punjab and Another, 2024 SCC OnLine SC 109, wherein also the provisions of UAPA Act were invoked, the Hon'ble Supreme Court has considered the said aspect. Mr. Singh further submitted that, the Appellant has yet not reached the stage as contemplated under Section 436-A of the Cr.P.C. i.e. he has not yet undergone 50% of sentence and therefore also the Appellant may not be

released on Bail on the ground of prolonged incarceration at pretrial stage. He therefore requested this Court to dismiss the Appeal.

[7] In rejoinder to the arguments advanced by the learned Additional Solicitor General, Dr. Chaudhry for the Appellant submitted that, the Hon'ble Supreme Court in the case of Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttarpradesh, Criminal Appeal No.2790 of 2024, dated 18th July, 2024, has distinguished its decision in the case of Gurwinder Singh (supra) and therefore placing reliance on the case of Gurwinder Singh (supra) by the prosecution is of no avail to the Respondent No.1.

[8] Perusal of entire record clearly indicates that, the Appellant was arrested on 14th April, 2020 and as of today is in pretrial incarceration for more than 5 years and 7 months. The prosecution has cited about 363 witnesses in support of its case. The record/charge-sheet of the case is of 20000 pages. As submitted by the learned counsel for the Appellant, the discharge Application of the Appellant is pending for final adjudication for last about 3 years and therefore the charge is yet to be framed against him.

[9] It be noted here that, the co-accused namely Sudhir Dhawale (A1) and Rona Wilson (A-2) have been granted Bail by this Court predominantly on the ground of prolonged incarceration without trial and therefore the Appellant is entitled to claim parity with the said two accused. Record further indicates that, three other accused persons have been granted bail either by the Hon'ble Supreme Court or by this Court on merits also. As of today more than 9 accused persons in the said crime have been released on bail.

[10] A three Judge Bench of the Hon'ble Supreme Court in the case of **Union of India Vs. K.A. Najeeb**, 2021 3 SCC 713, in paragraph Nos. 10, 11, 12, 15 and 17 has held as under:

" 10. It is a fact that the High Court in the instant case has not determined the likelihood of the Respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of UAPA.

11. The High Court's view draws support from a batch of decisions of this Court, including in Shaheen Welfare Association (supra), laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p. 622 para 10)

"10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case on the presumption that the trial of the Accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."

(emphasis supplied)

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act") which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)*, *Babba v. State of Maharashtra* and *Umarmia alias Mamumia v. State of Gujarat* enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statue as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has

exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

10.1) In the case of Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another, Criminal Appeal No.2787 of 2024, dated 3rd July, 2024, while considering the Application for Bail of the Appellant therein, who was facing prosecution under the provisions of the Unlawful Activities (Prevention) Act 1967, in paragraph Nos.18, 19 and 20 the Hon'ble Supreme Court has held as under:-

"18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

10.2) The Hon'ble Supreme Court in the case of Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttarpradesh, Criminal Appeal No.2790 of 2024, dated 18th July, 2024, has distinguished its decision in the case of Gurwinder Singh (supra). In paragraph Nos.31 and 32 of the said decision the Hon'ble Supreme Court has held as under:

31. In Gurwinder Singh (supra) on which reliance has been placed by the respondent, a two Judge Bench of this Court distinguished K.A. Najeeb (supra) holding that the appellant in K.A. Najeeb (supra) was in custody for five years and that the trial of the appellant in that case was severed from the other coaccused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in Gurwinder Singh, the trial was already

underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.

[11] It is thus clear that, the reliance placed by Mr.Singh on the decision of Gurwinder Singh (supra), is of no avail to the prosecution as the said decision has been distinguished by the Hon'ble Supreme Court in a subsequent decision in the case of Sheikh Javed Iqbal (supra). It be noted here that, it is by now a well settled and recognized principle of law that, prolonged incarceration without trial amounts to infringement of right of an accused enshrined under Article 21 of the Constitution of India. The prolonged incarceration and unlikelihood of the trial being completed in reasonable time or near future, necessitates a consequential release of the under trial on Bail.

[12] As noted above, the Appellant is already in pretrial incarceration for more than 5 years and 7 months as of today. Taking into consideration the ratio laid by the Hon'ble Supreme Court in afore-noted decisions and in particular enunciated in the case of Union of India Vs. K.A. Najeeb (supra), in our opinion, the Appellant can be enlarged on bail during the pendency of his trial.

[13] Hence, following Order:-

(i) The impugned Order passed below Exh.535 in Special Case No.414 of 2020 is set aside.

(ii) Appellant is directed to be released on bail in Special Case No.414 of 2020 arising out of C.R. No.4 of 2018 originally registered with Vishrambaug Police Station, Pune and subsequently investigated by Respondent N.I.A. pending on the file of learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai on his executing P.R. bond in the sum of Rs.1,00,000/- with one or more solvent local sureties to make up the amount;

(iii) Before his release from jail, the Appellant shall inform the NIA, Mumbai so also to the trial Court, his prospective place of residence.;

(iv) Appellant shall surrender his passport, if having or in his possession, before the trial Court, before his release from Jail.

(v) Appellant shall also provide his mobile and/or landline number to NIA, Mumbai and to the trial Court, on which he can be contacted;

(vi) Till the Appellant complies with the aforesaid conditions No.(ii) to (v), the Appellant is permitted to furnish cash surety of Rs.1,00,000/- before the trial Court.

(vii) After the Appellant complies with the afore-noted condition Nos. (ii) to (v) above, the Appellant is entitled for return of the said cash security amount from the trial Court.

(viii) After his release from jail, the Appellant shall attend the office of NIA, Mumbai on every first Monday of every calender month between 11.00 a.m. and 1.00 p.m. and shall mark his presence till the conclusion of trial;

(ix) Appellant shall not leave the territorial jurisdiction of this Court without prior permission of the learned Special Judge, NIA, City Civil and Sessions Court, Greater Mumbai seized of Special Case No.414 of 2020;

(x) Appellant shall attend all the dates before the trial Court unless precluded on medical grounds.

(xi) Appellant shall not tamper with the prosecution witnesses and/or evidence in any manner;

13.1) Appeal is allowed in the aforesaid terms.

[14] At this stage, Mr.Singh, learned Additional Solicitor General requested this Court to stay the operation and implementation of the present Order to enable Respondent No.1, to test its correctness before the Apex Court.

14.1) Taking into consideration the fact that, as of today, the Appellant is in pretrial incarceration for more than 5 years and 7 months, the prayer of stay is rejected.

[15] All the concerned to act on an authenticated copy of this Judgment

2026(1)MBAJ97

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Criminal Appeal No 716 of 2009 **dated 01/12/2025**

State of Maharashtra

Versus

Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad

DEMAND OF BRIBE

Code of Criminal Procedure, 1973 Sec. 313 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12 - Demand of Bribe - Appeal filed against acquittal order under Prevention of Corruption Act - Allegation that public servant demanded illegal gratification for passing order in mutation entry - Trap laid by Anti-Corruption Bureau and recovery made - Trial Court acquitted accused on ground of lack of corroboration and absence of proof of conscious acceptance - Evidence of complainant and panch witnesses considered not credible - Appellate Court observed that double presumption of innocence operates in case of acquittal and interference permissible only if findings are perverse or unreasonable - Evidence reappraised showing that prosecution failed to prove demand and acceptance beyond reasonable doubt - Held that mere recovery not sufficient to convict without proof of demand and voluntary acceptance - Acquittal based on proper appreciation of evidence - Acquittal confirmed - Criminal Appeal Dismissed

Law Point: For conviction under Sections 7 and 13 of Prevention of Corruption Act, prosecution must establish demand and voluntary acceptance of illegal gratification beyond reasonable doubt - Mere recovery of tainted money without proof of demand and conscious acceptance cannot sustain conviction - Appellate Court should not interfere with acquittal unless findings are perverse or wholly unreasonable

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 313

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12

Counsel:

Anuja Sunil Gotad, Uday Dube (Senior Advocate), Balwant Salunkhe, Saurabh Butala

JUDGEMENT

Dr. Neela Gokhale, J.- [1] This Appeal assails the Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2) from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short '**PC Act**') and acquitting the Respondent No.3 (Original Accused No.3) from the offence punishable under Section 12 of the PC Act.

[2] By an order dated 18th June 2009, this Court, by a reasoned order opined that a triable issue was made out by the Appellant-State of Maharashtra, to be dealt with in this Appeal, to ascertain the correctness and legality of the impugned Judgment and Order. Hence, this Court allowed the Leave Petition and admitted the Appeal.

[3] The facts of the case, in brief, are as under:

3.1 The Respondent No. 1/Accused No.1 (A/1) was a Tahsildar posted at Indapur. The Accused No.2/Respondent No.2 (A/2) was working as a clerk in the Tahsildar's

office, and the Accused No.3/Respondent No.3 (A/3) was another person in the office of the Tahsildar.

3.2 The Informant's father died on 19th June 2005 and he thus, made an application before the Talathi, seeking to enter the names of his father's legal heirs on the revenue records of the agricultural land owned by his father. The Talathi carried out the mutation entry. The same was challenged by one Vijay Gulumkar, a cousin brother of the Informant. Hence, the Application was forwarded to the A/1 for decision. Notices were issued to the parties calling upon them to appear before the Tahsildar on 31st October 2005. Written statements were submitted, and the matter was closed for orders.

3.3 On 22nd December 2007, the Informant (PW/1) went to the office of the Tahsildar to enquire about the pending case. The Tahsildar demanded Rs.3,000/- in lieu of clearing the file and passing an order in favour of the Informant. The Informant indicated his inability to pay the said amount prompting the Tahsildar to reduce the demand to Rs.1,000/-. The Informant met A/2 who also conveyed the demand of 'Saheb' to him. Again at 05:00 pm. on the same date, the Informant met the Tahsildar and his clerk in his office, who asked him as to whether he had brought the amount with him. They told him that he should pay the money and collect the order. The Informant assured the A/1 and A/2 that he will come on the following day with his brother and bring the money.

3.4 The Informant then, made a complaint with the AntiCorruption Bureau, Pune ('ACB') on 28th December 2005, (Exhibit-30) narrating the demand of the A/1 and A/2. The ACB Pune laid a trap on the same day. The amount of Rs.1,000/- (10 currency notes of Rs.100/- denomination) was taken from the Informant and the numbers of the currency notes were noted; anthracene powder was applied on the currency notes on both sides; and these notes were returned to the Informant to be given to A/1 - Tahsildar. A pre-trap panchanama was recorded (Ex.33). One panch, Shri Ganesh Krishna Chillal (PW/2) accompanied the Informant in the office of the Tahsildar. The Tahsildar informed him that a copy of the order was sent to the Talathi and also inquired about the bribe money. On the instructions of the Tahsildar, the Informant met A/2 - clerk who pointed to the A/3, namely Shrikant Gaikwad, who accepted the money on behalf of the A/1. Two copies of the order were handed over to the Informant. After paying the money to A/3, the Informant signaled the officers as per their instructions and he came out of the room. The pancha accompanying the Informant remained in the room as per predetermined plan. The members of the raiding party went in the room on a predetermined signal and caught A/3 red handed. The amount was recovered from the drawer of the computer room in A/2's cabin, where the A/3 had kept the same.

3.5 The numbers of the currency notes recovered from the computer room were tallied with the numbers noted by the ACB officials. Anthracene powder was found on the said currency notes and on A/3's hand and the drawer of the computer room. The

documents of the mutation entry case were collected from the Tahsildar's office, a panchanama was recorded (Exhibit-34). Shri Sudam Darekar (PW/4), Deputy SP, ACB, conducted the investigation. A sanction for prosecution of the A/1 and A/2 was sought and granted by the sanctioning authority (Sanction Order at Ex.40) and upon completion of the investigation, the charge-sheet was filed before the JMFC, Indapur. The offence punishable under Sections 7 and 13 of the PC Act, being exclusively triable by the Sessions Court, was committed by the JMFC, Indapur, to the Court of Sessions, for trial.

3.6 By an order dated 26th March 2008, the Special Judge, Baramati, framed charges against the A/1 and A/2 for offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, and against A/3 for offence punishable under Section 12 of the PC Act.

3.7 After framing of the charges, the Accused pleaded not guilty and sought to be tried.

3.8 During the course of the trial, the prosecution examined four witnesses. The witnesses examined are as follows:

PW/1 Sukhdeo Rangnath Gulumkar (First Informant)

PW/2 Ganesh Krishna Chillal (Panch No.1)

PW/3 Shantaram Sitaram Kudale (Under Secretary Forest Section- Proposal for sanction received by his office).

PW/4 Sudam Vitthal Darekar (ACP of the Anti -Corruption Bureau)

3.9 Thereafter, the Trial Court recorded the statements of the Respondents (Accused Nos.1, 2 and 3) under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'). The defence of the accused was that of false implication. The learned Special Judge, Baramati, by its Judgment and Order dated 2nd September 2008 acquitted A/1 and A/2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act and acquitted A/3 for the offence punishable under Section 12 of the PC Act. Aggrieved by the acquittal, the State of Maharashtra has filed the present Appeal. By an order dated 18th June 2009, Leave Petition was allowed, and the Appeal was admitted. The Record and Proceedings were called and received.

[4] Notice was duly served on all the Respondents and Mr. Balwant Salukhe represented the Respondent Nos.1 and 2. None appeared for the Respondent No.3.

[5] Before adverting to the rival submissions, it is necessary to discuss the principles laid down by the Supreme Court governing the scope of interference by the High Courts in an appeal filed by the State, assailing the finding of acquittal of the accused by the Trial Court. The Supreme Court in its decision in the matter of **Rajesh Prasad v. State of Bihar & Anr.**, 2022 3 SCC 471 held as below:-

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while

dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [**Chandrappa v. State of Karnataka**, 2007 4 SCC 415])

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseology are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

[6] Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka**, 2023 9 SCC 581 the Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. as follows:

"8.8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

[7] Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the Trial Court in favour of the Accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

[8] The Appellate Court, to interfere with the judgment of acquittal, would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

[9] In the light of above legal principles, I now proceed to analyze the evidence before the Trial Court, leading to the acquittal of the accused.

[10] The PW/1, the Informant, in his examination-in-chief has clearly narrated the incident of 22nd December 2005, i.e., the day on which the first demand was made by A/1. He specifically stated that A/1 demanded an amount of Rs.3,000/- for deciding the application in his favour. There were some negotiation and A/1 agreed to accept a reduced amount of Rs.1,000/- in lieu of passing an order in favour of the Informant. The PW/1 visited the Tahsildar office once again, when he was again told by A/1 to pay the money to A/2, who was instructed by A/1 to prepare the order and give copy of the same, after receiving the amount. In his crossexamination, PW/1 has categorically denied that he was unable to meet A/1 on the said date as he was on tour from 8.00 am to 5.00 pm. It is also revealed from the crossexamination that PW/1 learnt about the decision on his application only when he went on the assigned date to pay the bribe amount. Once, he assured that he had the amount, he was directed to pay the money to A/2 and collect the order passed in his favour from the Talathi, to whom the order was dispatched. Nothing was elicited from the cross-examination to indicate that A/1 was out of his office on 22nd December 2005, i.e., the day on which the demand was made. One of the defence of A/1 was that he was not present in the office on the date of first demand.

[11] The second demand was made at the time when PW/1 and PW/2, i.e., one of the panchas, accompanying PW/1 went to the Tahsildar's office, pursuant to the trap laid by the ACB. The deposition of the pancha confirms the demand made by A/1 once

again. He deposed that he accompanied PW/1 in the cabin of Tahsildar on 28th December 2005, when the Tahsildar told PW/1 in his presence that his work is ready, one copy was sent to the Talathi and another is with A/2 and that he should collect the order from A/2. A/1 met A/2 after which A/2 asked PW/1 as to whether he had brought the money. Thereupon A/2 directed PW/1 to give the money to A/3. The money exchanged hands, A/3 counted the amount and pocketed it, confirmed to A/2 that money was paid after which PW/1 was given a copy of his order. PW/2 further confirmed that in his presence and on a signal given by PW/1 as prearranged, the ACB officials entered the Tahsil office. On A/3's admission, money was recovered from the drawer of the computer-room. The currency notes were checked for anthracene powder, and the numbers were tallied with the pre-trap panchanama. Anthracene was found on the hands and pocket of A/3 and the drawer in the computer-room. The entire sequence of events has been deposed by PW/2 to have taken place in his presence. Even on intense crossexamination, his testimony could not be shaken.

[12] Pw/3 is the Under-Secretary of Forest Section and has deposed regarding sanction to prosecute the Accused. The same has not been seriously contested by the Accused.

[13] Pw/4 is the ACP of the ACB. In his deposition, he has narrated the facts regarding complaint of PW/1, the action taken by him and other officials in laying the trap including, applying anthracene powder on Rs.100/- notes, which were to be given by PW/1 to the Accused, the recording of the pretrap panchanama and the actual raid carried out. In his crossexamination, an attempt was made by the defence to establish that the work of PW/1 was done by the Accused before the bribe money was paid. However, this witness remained steadfast in his testimony that the fact of the order passed in favour of PW/1 was noticed after the trap. Hence, nothing beneficial to the Accused was elicited from his crossexamination.

[14] I have perused the pre-trap panchanama and the panchanama recorded after the bribe money was recovered. The deposition of the witnesses is consistent with the panchanamas.

[15] I have perused the Judgment and Order acquitting the Accused carefully. The finding of the acquittal is only on the basis of a certified copy of a log-book of the Government vehicle, claimed to have been used by A/1 to travel out of Indapur to nearby villages for official work on 22nd December 2005, i.e., on the date on which PW/1 claims that the first demand was made. The learned Special Judge has relied on the statement of A/1 recorded under Section 313 of the Cr.P.C., that on the date of demand, he left his residence at 8.00 a.m. and visited villages - Wadapuri, Bhodni, Lakhewadi, Chakati, Redni and Warkude (Khurd). The Special Judge has recorded that a copy of the bill of TA and DA paid to the driver Kale, as per entry in the log-book and the certified copies of the statements of the persons recorded at the time of spot inspection at Mauje-Wadapuri on 22nd December 2005 are on record and sufficient to show that the A/1 was not in office on the date of demand. Hence, only on

this basis, the Special Judge has disbelieved the deposition of PW/1. Secondly, the Special Judge appears to be swayed by the statement of A/1 that the application was already decided in favour on 27th December 2005, i.e., one day before the trap. On these two grounds, the Special Judge acquitted the Accused.

[16] I have perused the Record & Proceedings. There is a copy of the log-book certified by the Tahsildar himself, which has an entry of the vehicle leaving Indapur at 8:00 am and returning at 9:00 pm traveling to the villages mentioned herein above. There are also other entries in the log-book of the movement of the Government vehicle on other dates, including on 28th December 2005 from 9:00 am to 6:00 pm. However, it is an admitted fact that, on 28th December 2005, between 5:00 pm and 5:45 pm, a trap was laid by the ACB in A/1's office and all the accused were very much present in the office. The trap and the recovery of the bribe amount accepted by Accused is proved by statements of PW/1, PW/2 and PW/4. It is also not the case of any of the Accused, that they were not present in the office on 28th December 2005. Thus, the entries in the log-book are only indicative of movement of the Government vehicle from Indapur to various places. The log-book entries by themselves are not evidence of travel of A/1 in the Government vehicle. If it was his case that the Government vehicle is used only by A/1, then, there possibly cannot be an entry regarding travel by A/1 on 28th December 2005, i.e., on the date of trap. The defence has nowhere attempted to establish that the Government vehicle was used only by the Tahsildar, leading the trial court to believe absence of A/1 in the office on the first demand date. On the contrary, the prosecution has beyond any doubt proved the demand made by A/1 by cogent oral evidence, which the defence was unable to demolish.

[17] The Special Judge has also accepted the statement of overtime TA/DA given to one Mr. A.J. Kale stated to be the driver attached to the Tahsil office in Indapur. The statement of TA/DA is from 1st December 2005 to 27th December 2005 and 3rd January to 28th February 2006. Contrary to the logbook entry of movement of the vehicle from 9:00 am to 6:00 pm on 28th December 2005, there is no explanation forthcoming regarding absence of the allowance on 28th December 2005. Thus, this is a major contradiction on the part of defence, rendering the story of the Accused completely unbelievable.

[18] There are many documents placed on record by the defence to show that some applications were made by the residents of Wadapur regarding requirement of a road in their village. Of the plethora of documents placed on record, only two statements relate to 22nd December 2005 signed by persons stated to be villagers of Wadapur. The place of recording of the statements is not visible on the documents. Most pertinently, none of the persons including any villager, pancha, driver-Kale nor any person maintaining the log-book of the Government vehicle is examined by the defence. In view of the discrepancies in the log-book as compared with TA/DA statement of the driver, it was imperative for the defence to examine some witness corroborating the story of the Accused.

[19] The defence of the Accused appears to be that of a plea of alibi. In the decision in **Binay Kumar Singh v. State of Bihar**, 1996 INSC 1260. The Supreme Court has considered the question of alibi meaning 'Elsewhere' and observed that the said plea would be available only if that 'Elsewhere' is a place far-off making it impossible or improbable for the person concerned to reach the place of occurrence of offence. The Apex Court held as under:

".....Once the prosecution succeeds in discharging the burden it is incumbent on the Accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Page 13 of 19 **Nath Pandey v. State of U.P.**, 1981 2 SCC 166 **State of Maharashtra v. Narsingrao Gangaram Pimple**, 1984 1 SCC 446.)"

[20] In the facts of the present case, the demand of the bribe money is established satisfactorily by the prosecution, through reliable evidence. Hence, it was incumbent on the defence to adduce evidence of the alibi by strict proof. The defence has completely failed to establish the plea of alibi. There is absolutely no evidence establishing presence of A/1 at the place other than the spot of the occurrence of the offence. In these circumstances, I am of the considered view that there is a mis-reading/omission on the part of the Special Judge in considering the material evidence on record. There is thus, a patent infirmity in the Judgment and Order impugned herein.

[21] The other basis of acquittal as per the Special Judge is that, there was no motive for the demand of bribe as the order in favour of the Informant was passed on 27th December 2005 itself. This finding is also contrary to the evidence on record. The prosecution has established the factum of demand and acceptance of bribe money by A/1 and A/2 beyond reasonable doubt. It has come on record that PW/1 was informed regarding the order passed on 27th December 2005 when he along with PW/2-Pancha went to the office of the Accused to pay the money, pursuant to the trap laid by the ACB. The PW/1 was told that his order was sent to the Talathi's office and categorically A/2 was directed by A/1 to take money from PW/1. The entire transaction was that of a simultaneous give and take. The fact of passing of the order was informed to him at the same time when the bribe money was accepted from him.

Hence, the finding of the Special Judge in this regard is quite distorted, in this regard, as well.

[22] Section 7 of the PC Act deals with public servants accepting or attempting to accept illegal gratification other than their legal remuneration. Its essential ingredients are (i) that the person accepting the gratification should be a public servant; and (ii) that he should accept the gratification for himself, and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. Insofar as Section 13(1)(d) of the PC Act, it was amended by the Prevention of Corruption (Amendment) Act, 2018, with effect from 26th July, 2018. However, in view of Section 6 of the General Clauses Act, 1897, Section 13(1)(d) prior to the amendment, is applicable to the facts of the present case, as the offence was stated to have been committed on 22nd December 2005 and 28th December 2005. Thus, its essential ingredients are (i) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person. The facts in the present case not only bring home the guilt to A/1 but also A/2, who directed the Informant to hand over the bribe money to A/3 and in lieu of the same, gave a copy of the order to the Informant. Thus, A/1 and A/2 are both complicit in commission of offence. As far as A/3 is concerned, the prosecution has been unable to establish beyond reasonable doubt, the abetment of the offence by A/3. The prosecution has failed to establish the active role and knowledge of A/3 that the money given to him was bribe money. Hence, the acquittal of A/3 cannot be faulted.

[23] The Supreme Court in its decision in the case of **State of Karnataka v. Chandrasha**, 2024 INSC 899 has reproduced its observations in an earlier decision in the matter of **Swatanter Singh v. State of Haryana**, 1997 4 SCC 14

"6..... Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

[24] Corruption on the part of public officers erodes the faith reposed by the citizens and has a pervasive impact on governance and democracy. Undoubtedly, the amount of bribe is a mere Rs.1,000/- however, it is settled law that it is not necessary for the amount involved to be substantial to draw the presumption under Section 20 of the PC Act. As per Section 20(3) of the PC Act, the Court has a discretion to refrain from drawing adverse presumption against the public servant if the amount involved is

trivial. In the case of **Chandrasha** (Supra), the Supreme Court held that the presumption becomes irrelevant when the agreement to receive gratification is factually proved. The presumption under Section 20 of the PC Act provides that where it is proved that the public servant has accepted or obtained any undue advantage, unless the contrary is proven, it shall be presumed that such acceptance of undue advantage was with a motive or reward under Section 7 of the PC Act. The value of gratification is to be considered in proportion to the act to be done or not done, to forebear or not to forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. In any case, the fact of demand and receipt of demand stand proved in the present case.

[25] Being conscious of the settled law that, in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the Appellate Court would not be justified in setting aside the acquittal merely because another view is possible. In the present case however, the demand, the recovery of the bribe money from A/1 and A/2 being proven, in the absence of any concrete material supporting the defence, brings home guilt to them beyond reasonable doubt. Once, the 'demand' and 'acceptance' of the bribe amount is established beyond reasonable doubt, in my opinion, no two views are possible in that matter. The defence has made no attempt to establish the alibi theory attempted to be put forth by A/1. Thus, the Judgment and Order impugned herein, is unsustainable. The Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2 from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside. For reasons mentioned herein above, A/3 remains acquitted and the Judgment and Order impugned in so far as relating to A/3 is confirmed.

[26] Having convicted the Respondent Nos. 1 and 2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, the next consideration is the quantum of punishment that may be imposed on them. Hence, I proceeded to hear the Respondent Nos.1 and 2 on the aspect of sentencing on 21st November 2025.

[27] Heard Mr. Uday Dube, learned Senior Counsel appearing for the Respondent Nos.1 and 2.

[28] Mr Dube, submitted that as many as 17 years have elapsed from the time that the accused were acquitted. He further submitted that the A/1 is due for retirement next year and has also aged considerably. Similarly, he submitted that the A/2 has few more years of service and has a family with children. Both the Accused are the sole earning members in their families and hence, lenient view be taken in the matter of sentencing.

[29] Admittedly, as many as 17 years have elapsed from the time, the accused were acquitted. The A/1 is due for retirement next year and the A/2 has few more years of service and has a family with children. Considering the gravity of the offence, the circumstances of the Accused and the time taken in deciding the present Appeal, I am

inclined to impose minimum sentence provided for the said offence at the relevant time. The A/1 and A/2 are directed to undergo 6 months of simple imprisonment and liable to pay fine of Rs.500/- each. The A/1 and A/2 are directed to surrender before the Trial Court within a period of 12 weeks from today and the Trial Court is directed to take steps to commit them in prison to undergo the period of sentence and recover the fine imposed on them.

[30] The Appeal is accordingly, partly allowed

2026(1)MBAJ108

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Anticipatory Bail Application No. 2633 of 2025 dated 25/11/2025

Shyamsundar Radhyesham Agarwal; Balwant Kashinath Patil

Versus

State of Maharashtra

LAND FORGERY ALLEGATION

Indian Penal Code, 1860 Sec. 34, Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B - Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 482, Sec. 173 - Land Forgery Allegation - Application sought pre-arrest protection in cheating and forgery offences relating to agricultural land - Allegations of fraudulent Power of Attorney and sale without government permission under tenancy law - Applicant contended transactions old, registered, and confirmed through civil proceedings - FIR filed after long delay alleging alteration of documents and misuse of authority - Prosecution argued ongoing investigation and multiple criminal antecedents - Material indicated complex civil disputes converted into criminal complaint - Court noted delay, availability of documentary evidence, and cooperation of applicant during inquiry - Held custodial interrogation not warranted - Protection granted subject to cooperation with investigation - Anticipatory Bail Granted

Law Point: Delay and documentary nature of property transactions justify pre-arrest protection where civil elements predominate and custodial interrogation not essential for investigation.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 482, Sec. 173

Counsel:

Mihir Desai (Senior Advocate), Pavan Patil, Prithviraj Gole, Soham Badole, Siddhesh Pednekar, Mahalakshmi Ganapathy, Aabad Ponda, Karan Jain, Faizal Shaikh

JUDGEMENT

Amit Borkar, J.- [1] The applicant, who is arrayed as accused No. 3, has moved this application seeking pre-arrest protection under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The relief is sought in connection with Crime Register No. 559 of 2025 registered at Thane Nagar Police Station for offences under Sections 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, 1860. The FIR is lodged by one Balwant Kashinath Patil.

[2] The complainant filed a report under Section 173 of the Bharatiya Nagarik Suraksha Sanhita against the present applicant. His case is that his family depends on cultivation of ancestral land situated at Mouje Navghar, Bhayandar, Thane. The land bears old Survey No. 280 and new Survey No. 91. It admeasures 18,490 square meters and was recorded in 1948 as protected tenancy of his great-grandfather, Vitthal Shinwar Patil.

[3] The complainant narrates that Vitthal left behind five heirs. They were Ganeswar Vitthal Patil, Krishnabai Kashinath Patil, Mathurabai Jayaram Gharat, Bhagyabai Mukund Gawde and Bayabai Kakaji Bhoir. Their names were entered as protected tenants after Vitthal's demise. Upon their deaths, the names of their heirs were mutated. It is alleged that several heirs executed a Power of Attorney dated 10 September 2003 in favour of Harshad Dinanath Gawde and Dinanath Sadashiv Gawde. The document was not registered. It is alleged to have authorized the attorneys to sell the land, decide the price, manage revenue affairs and obtain necessary permissions with the consent of heirs who were unable to regularly visit government offices.

[4] The complainant states that the understanding among the heirs was clear. Any sale proceeds were to be shared by all heirs. Any final document was to bear signatures of all heirs. His mother, Smt. Krishnabai Kashinath Patil, passed away on 1 October 2021.

[5] The complainant states that when he checked the 7/12 extract of new Survey No. 91 on the online portal to enter his name as heir of Krishnabai, he found the names of Shubham Murlidhar Agrawal and Sharad Murlidhar Agrawal. He asserts that no sale was ever carried out by the family. No heir received any consideration. He approached the District Collector, Thane, and obtained documents including a permission letter dated 10 September 2011 issued by the Sub-Divisional Officer. He also obtained pleadings from Special Civil Suit No. 481 of 2011. He alleges that the compromise in that suit was recorded without signatures of any heirs and without service of summons.

[6] The complainant further states that under the Right to Information Act, he secured a copy of a Deed of Conveyance dated 14 November 2008. The document shows TNN No. 4 and Doc. No. 9727 of 2008. He alleges that the applicant falsely represented himself as Power of Attorney holder and sold the property to his nephews, Shubham and Sharad Agrawal, for Rs. 80 lakhs. He alleges erasures on page 10 of the

document. He alleges that the 7/12 extract was replaced with one pertaining to Godev village. The entry under Section 43 relating to tenant rights was removed. He alleges that the name of the Attorney was altered by substituting the name of Shamsundar Agrawal in place of Dinanath Sadashiv Gawde. He states that the interior pages still mentioned the original Power of Attorney holders. He also alleges that the Sub-Registrar wrongly attached Godev's 8/12.

[7] The complainant refers to a confirming document dated 15 September 2011 bearing Doc. No. 7281 of 2011. It was executed by Dinanath and Harshad Gawde in favour of Shubham and Sharad Agrawal. It purports to confirm the 2008 deed without any consideration. He alleges that Mutation Entry No. 1282 was wrongly altered to show that payment was made to the Power of Attorney holders. He alleges that the confirming parties acted beyond the authority granted under the 2003 Power of Attorney. He states that only the heirs of deceased Dhaneshwar Vitthal Patil could have confirmed the transaction. This was not done. He also states that Shamsundar Agrawal, who was shown as purchaser, filed the mutation application himself.

[8] The complainant points out that permission of the Government to sell the land was obtained only later. Permission letter dated 10 September 2011 was issued in favour of the heirs, the Power of Attorney holder and the purchasers. This was on an application dated 19 September 2009. He alleges that before obtaining such permission, Shamsundar Agrawal prepared a false Power of Attorney, deleted the name of Dinanath, substituted his own name and executed the conveyance on 14 November 2008 showing sale for Rs. 80 lakhs. He alleges that the annexures included 7/12 extract of Godev village and the entry under tenant law was deleted. He states that the deed was executed without consent of heirs and without distribution of sale proceeds. He alleges that the deed was executed knowing well that prior permission was mandatory. He states that only thereafter was an application made in 2009 and permission granted in 2011.

[9] The complainant reiterates that between 14 November 2008 and 15 September 2011, accused persons, including Dinanath, Harshad, Shamsundar and the Agrawal brothers, acted in collusion. He states that they took steps to usurp the protected tenancy land bearing old Survey No. 280 and new Survey No. 91. He states that though the heirs stood recorded on the 7/12 extract, the accused misused the Power of Attorney dated 10 September 2003, altered it and inserted the name of Shamsundar. He alleges that knowing that prior permission was mandatory, they executed a sale deed without such permission, annexed documents of Godev village and removed the tenant law entry. He states that only later they applied for permission and obtained it. He alleges that by fraud and misrepresentation they deprived the heirs of their property and misled the Government. On these allegations the FIR came to be lodged.

[10] The applicant, apprehending arrest, moved an application under Section 483 before the Sessions Judge. The Sessions Court rejected the application by order dated

29 September 2025. The applicant has therefore approached this Court seeking anticipatory bail.

[11] Mr. Desai, learned Senior Advocate for the applicant, submitted that the transactions referred to in the FIR pertain to the period between 2003 and 2011. All these transactions were registered. They were acted upon. They were confirmed in several civil proceedings. The FIR has been filed in 2025, almost 12 to 15 years later, and even after the informant's alleged adoptive mother passed away in 2021. He submitted that the FIR is an attempt to unsettle a chain of title which stood concluded long ago and which was acknowledged by the complainant's own predecessor in two civil suits. He submitted that all legal representatives executed registered agreement for sale and a registered power of attorney in 2003. Full consideration was paid. A registered conveyance was executed in 2008. A registered rectification deed followed in 2011. Permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act was duly granted by the Sub Divisional Officer. In 2014, Suit No. 234 of 2012 was settled, which related to these very instruments. In 2023, multiple confirming deeds were executed. Therefore, according to him, the informant cannot now plead ignorance or allege fraud regarding documents executed in 2008 and 2011.

[12] He submitted that Annexure II, which is the 7/12 extract annexed with the conveyance, does not contain the entry under Section 43 of the BTAL Act. According to him, this is a clerical mistake. He submitted that it does not affect the legality of the registered conveyance. The conveyance contains the correct description, certificate number and recitals relating to the Navghar land. Permission granted in 2011 by the competent authority was for the Navghar property after due inquiry.

[13] He submitted that the plea that the heirs were unaware of the alleged forgery cannot stand. The heirs were represented by advocates in all proceedings. Most of them have executed registered confirming deeds thereafter.

[14] Referring to the 7/12 extract annexed to the conveyance, he submitted that the mistake stood corrected by a registered rectification deed in 2011. The informant claims to be the adopted son of deceased Krishnabai. The informant was himself a witness to the power of attorney and the agreement for sale of 2003. He submitted that deceased Krishnabai was fully aware of the execution of these documents and the subsequent conveyance and rectification deed. He submitted that this fact is recorded in proceedings of Special Civil Suit No. 286 of 2017.

[15] Referring to the power of attorney executed in 2003, he submitted that the document is entirely typed. There are no alterations or insertions. The conveyance was executed in 2008. He submitted that in Suit No. 286 of 2017 filed by another branch of the family concerning the same land, the issues now raised in the FIR were also raised. In that suit, deceased Krishnabai was defendant No. 12. She was served by bailiff and was fully aware of the conveyance.

[16] He submitted that Krishnabai passed away on 1 October 2021. She did not raise any objection to the power of attorney or to the conveyance during her lifetime. The informant alone has filed the FIR. His claim of adoption is not proved.

[17] Referring to the 2008 conveyance, he submitted that on 18 October 2008 the applicant applied for permission under Section 43 of the BTAL Act. On 14 November 2008, the conveyance was executed. The wrong 7/12 extract was annexed. On 18 February 2009, one branch of the family raised objections to the application under Section 43. On 27 February 2009, the Circle Officer submitted his report. On 2 March 2009, a public notice was issued by the applicant. On 10 September 2011, the Sub Divisional Officer allowed the application under Section 43 and recorded Shubham and Sharad Agrawal as purchasers. He submitted that on 15 September 2011, the rectification deed was registered and the correct 7/12 extract and permission were annexed. He submitted that the conveyance of 2008 and the 7/12 extract have been part of the public record since 2008.

[18] He submitted that though 35 antecedents are shown against the applicant, in three cases he has been acquitted. In six cases, FIRs have been quashed by this Court. In two cases, he has been discharged. In eight cases, the prosecution has filed summary reports. In eight other cases, the applicant's business partner, who is arrested under MCOCA, has filed cases against him. He submitted that in most matters the applicant has been protected either by interim orders of the Sessions Court or of this Court.

[19] He submitted that after this Court granted protection, the applicant cooperated with the investigation. He has produced either original documents or their photocopies. Co accused purchasers from 2008 onwards have already been granted bail. He submitted that the applicant also deserves protection.

[20] In reply, Ms. Ganapathy, learned APP, submitted that the offences alleged are grave. She submitted that the applicant, along with the co accused, entered into a conspiracy and prepared forged documents. According to her, bogus 7/12 extracts and fabricated powers of attorney were used by the applicant and on that basis the disputed land was illegally taken over. She submitted that two co accused, who are nephews of the applicant, have been arrested. During custodial interrogation they have stated that the applicant prepared and used forged documents. She submitted that the investigation regarding the forged documents is still in progress. She pointed out that the applicant has several criminal antecedents. She therefore urged that the application be rejected.

[21] Mr. Ponda, learned Senior Advocate for the informant, invited my attention to the statement of the Tahsildar recorded during investigation. The Tahsildar has stated that the 7/12 extract annexed to the 2008 conveyance does not contain the entry regarding the requirement of permission under Section 43 of the BTAL Act. According to him, the 7/12 extract is forged. He stated that the extract annexed pertains to Goddeo village whereas it ought to have been of Navghar. He submitted that though permission for sale was applied for in 2009, the conveyance refers to a permission said to be dated 14 November 2008. He submitted that deceased

Krishnabai did not receive the amount of Rs. 40,000 mentioned in the agreement for sale dated 10 September 2003. He submitted that her proportionate share as on 17 September 2003 was shown as having increased almost twenty four times within a period of seventeen days. According to him, this demonstrates that the amount shown as paid under the agreement for sale was disproportionately low.

[22] Referring to the power of attorney dated 10 September 2003, he submitted that it was executed in favour of Dinanath and Harshad Gawde, who are accused Nos. 1 and 2. They were to complete all government formalities relating to the tenancy rights of deceased Krishnabai. He submitted that on the same day the applicant claims that deceased Krishnabai executed another power of attorney in favour of Harshad Gawde and the applicant. According to him, this document is forged because the pages show alteration in the name of Shyamsundar at the beginning of the document. He further submitted that entries 1 to 10 in the agreement for sale dated 27 September 2003 show that payments were made by the applicant to the Gawdes in 2002. However, the alleged transfer documents between deceased Krishnabai and the Gawdes are dated 10 September 2003. He submitted that it was not possible for the applicant to anticipate a year in advance that the Gawdes would enter into a transaction on 10 September 2003. He pointed out that entry at serial No. 15 shows cash paid on 20 September 2003.

[23] He submitted that this is a serious case involving creation and use of forged documents. The forged documents have not yet been recovered. He submitted that the applicant has used such documents at several stages.

[24] He submitted that this is a case of land grabbing. He stated that the transfers are suspicious. He relied on Mutation Entry No. 1282 which shows that the Gawdes received Rs. 80 lakh on behalf of deceased Krishnabai and other protected tenants from Sharad and Shubham Agrawal. However, the recital in the conveyance dated 14 November 2008 shows that the applicant received Rs. 80 lakh from the same purchasers.

[25] Referring to the 7/12 extract and Index II of the conveyance of 2008, he submitted that the property conveyed was at Navghar. He submitted that by using whitener on the entry relating to protected tenancy, the applicant and co accused altered the village name from Navghar to Goddeo while executing the registered conveyance dated 14 November 2008.

[26] He submitted that the permission dated 10 September 2011 was obtained on a declaration made on behalf of one Dhaneshwar Patil, who had passed away on 30 May 2008. Based on this declaration, Sharad and Shubham were shown as entitled to purchase the land. He relied on the judgment of the Supreme Court in **Pratibha Manchanda and another versus State of Haryana and another**, 2023 8 SCC 181. He submitted that in cases involving land grabbing the Supreme Court has held that anticipatory bail should not be granted. He submitted that the Supreme Court has held that delay in filing the FIR is not material when the forgeries are evident and when the complainant had no prior knowledge of collusive civil proceedings and successive transactions.

[27] He submitted that the applicant gave a false address of the protected tenant in Special Civil Suit No. 481 of 2011 and executed the rectification deed dated 15 September 2011 without the knowledge of the protected tenant. He submitted that the consent terms executed on 26 September 2011 were fraudulent.

[28] He submitted that the applicant has suppressed criminal antecedents by stating only that multiple cases have been filed by his former business partner. He did not disclose the number of cases, which are in fact as many as 42 including the present FIR. He submitted that only seven cases are filed by the former partner. The remaining cases are filed by government officials, business associates and farmers whose lands were allegedly grabbed by the applicant. He submitted that the applicant disclosed 35 cases only after conclusion of arguments and filed a separate compilation. He therefore sought rejection of the anticipatory bail application.

[29] In rejoinder, Mr. Desai, learned Senior Advocate, submitted that in Pratibha Manchanda the general power of attorney said to be forged was never produced by the accused till 2022. Therefore, the Supreme Court held that delay was not material in that case. He submitted that the facts of the present case are different. He submitted that the applicant has cooperated with the investigation after interim protection was granted. He therefore prayed for continuation of interim relief.

[30] The short questions for determination in this application are these. First, whether the FIR suffers from such delay or laches as to render the prosecution suspect and make a case for pre-arrest protection. Second, whether the material on record discloses a prima facie case of serious forgery and collusion which disentitles the applicant to anticipatory bail. Third, if anticipatory bail is granted, what conditions would adequately protect the investigation and public interest.

[31] Anticipatory bail is a jurisdiction of exception. The court must exercise it with circumspection. The law recognises that personal liberty is a cherished right. A person should not lose that liberty only because someone has made allegations after many years or on the basis of suspicion. At the same time, the court cannot ignore that some offences affect the purity of public records and the confidence people place in the system. If there are allegations that public documents were tampered with or false documents were used, the court must examine the material placed before it with proper caution.

[32] The court has to maintain a fair balance. On one side is the duty to protect the liberty of a citizen and prevent unnecessary arrest. On the other side is the need to assist a proper and fair investigation. If there is material to show that the accused may influence witnesses, destroy important documents or otherwise interfere with the investigation, the court will be slow in granting anticipatory bail. The court, therefore, has to consider many factors. It must see how serious the offences are. It must see the conduct of the accused and his past record of dealing with the law. It must see what role is attributed to him, whether the FIR was filed promptly or after a long delay, and if there is delay, whether it is explained. The stage of investigation is also important and whether the police have shown that custodial interrogation is truly needed. The

court must also look at the civil record. If registered documents, rectification deeds and civil court orders have existed for years without objection, these are relevant and cannot be ignored.

[33] At the same time, the court cannot permit a party to hide behind civil proceedings if the material shows that public records were altered or false documents were created. Such allegations are serious. Yet, when there is long delay in filing the FIR and when civil proceedings have settled the issue for many years, the court must be slow to permit a criminal case to be revived without strong reasons. The court must take a practical view. It must examine whether the investigation can continue without arrest and whether conditions can be imposed to ensure that the accused does not obstruct the investigation.

[34] The approach, therefore, has to be balanced and reasonable. The court must protect the investigation and ensure that it proceeds properly. At the same time it must safeguard personal liberty and ensure that a person is not arrested merely because old and stale allegations have been levelled after many years.

[35] The record placed before the Court reveals that the chain of transactions now questioned by the prosecution is not of recent origin. The earliest documents date back to the year 2003. The conveyance deed was executed on 14 November 2008. A rectification deed followed on 15 September 2011. Both are registered instruments. Their execution, registration and continued subsistence on public record for more than a decade are matters of significance. They show that the transactions were neither concealed nor kept away from public scrutiny. They stood open to examination by any person claiming an interest in the property.

[36] The material further shows that the competent authority, namely the Sub Divisional Officer, granted permission under the tenant law after conducting an inquiry on 10 September 2011. The grant of such permission is not mechanical. It involves scrutiny of the claim, examination of revenue entries, and verification of the identity and status of the persons concerned. The authority's order, therefore, carries a presumption of regularity unless dislodged by cogent material.

[37] The civil record also reflects that disputes concerning the same property travelled before civil courts. Settlements were recorded. Confirming deeds were executed between parties. These events indicate that persons entitled to raise objections did participate in the process, acknowledged the transactions, and took steps consistent with their validity. Civil adjudication does not foreclose criminal prosecution where forgery is later detected. Yet the existence of civil proceedings and registered deeds for a long period is a relevant circumstance in assessing whether the lodging of the FIR after many years is a bona fide step or a reaction arising from later disputes within the family.

[38] The delay in lodging the FIR is substantial. A period of twelve to fifteen years has elapsed from the time of the impugned transactions. Such delay is not a mere

technicality. It affects the reliability of the accusation. It raises a serious question whether the grievance is genuine or whether the FIR has been invoked as an instrument to unsettle a chain of title that stood admitted and acted upon over the years. The Court must approach such delayed allegations with caution. Unless the complainant shows circumstances explaining why the wrongdoing could not have been discovered earlier despite the transactions being on public record, the delay militates in favour of the accused.

[39] The combined effect of registration of instruments, grant of statutory permission after inquiry, civil settlements, and prolonged inaction on the part of the heirs creates a presumption that the transactions had attained finality in the ordinary course of affairs. It is in this backdrop that the delay of more than a decade assumes importance. It casts a shadow of doubt over the bona fides of the prosecution's version and weighs in favour of the applicant at the stage of considering anticipatory bail.

[40] The statement of the Tahsildar, as brought on record by the prosecution, raises an issue of some gravity. A 7/12 extract is not a casual document. It is a revenue record of statutory character. Any alteration, substitution or fabrication of such a record strikes at the heart of the administration of land law. If it is ultimately established that an extract pertaining to one village was annexed in place of another, or that mandatory entries were removed or suppressed, the offence would be serious. Such conduct, if proved, would amount to tampering with public records and misleading statutory authorities.

[41] The prosecution also relies on statements said to have been made by two nephews during custodial interrogation implicating the applicant. Such statements cannot be treated as conclusive at this stage. They do not constitute substantive evidence. They form part of the investigative process and will have to withstand the test of relevance and admissibility in accordance with law. It is well settled that custodial statements must be approached with circumspection. They cannot by themselves be the foundation for denial of liberty unless supported by independent material.

[42] The prosecution asserts that the investigation is still in progress. According to the investigating agency, certain documents alleged to be forged have not yet been recovered. The investigation may, therefore, require further steps for tracing the original records, comparing them with revenue entries and verifying the chain of custody of those documents. These are legitimate requirements of investigation. The Court cannot ignore them. At the same time, the Court must ensure that the need for further probe does not become a ground for unnecessary curtailment of liberty, unless there is material to show that custodial interrogation of the applicant is indispensable.

[43] The stage of investigation is an important consideration. If relevant documents are yet to be seized, or if the investigating agency must confront various parties with each other's statements, some latitude must be granted to ensure that the investigation runs its course. These factors do weigh in favour of the prosecution's plea that the Court should proceed with care. They remind the Court that while delay and

civil proceedings may favour the applicant, the seriousness of the allegations and the need for unhampered investigation cannot be brushed aside.

[44] The delay that marks the present prosecution is not a matter of minor relevance. It goes to the root of the matter. The transactions now questioned were not hidden or surreptitious. They formed part of the public record by virtue of registration. They were followed by a rectification deed which was also registered. They were thereafter examined by the competent authority which granted permission under the tenant law after holding an inquiry. Each of these acts created a trail that was open, ascertainable and verifiable by any interested person.

[45] When transactions stand on the public record in this manner, any person who claims an interest in the property is expected, in the ordinary course of human conduct, to raise objection within a reasonable time. Here, the civil record shows that disputes relating to the same land did reach the civil courts. Parties entered into settlements. Confirming deeds were executed. These developments indicate that civil remedies were not only available but were actively pursued. There was, therefore, no legal or practical impediment preventing the complainant or his predecessors from questioning the transactions.

[46] The presence of successive civil suits, compromises and confirming deeds bears directly on the bona fides of the criminal case. When civil courts have dealt with the subject matter and when the parties themselves have relied on those very documents in civil proceedings, a sudden invocation of criminal law after long silence assumes a different colour. It suggests that the criminal law has been set in motion not because new facts have emerged, but because the underlying civil disputes have taken an unfavourable turn for one side.

[47] The Court must take a realistic and informed view. Criminal law cannot be used to unsettle transactions that have stood acknowledged, acted upon and affirmed over years unless there is compelling and immediate material showing deliberate fraud not discoverable earlier. On the present record, such immediacy is absent. The delay of more than a decade, coupled with the existence of registered documents, rectification deeds, statutory permissions and civil settlements, tilts the balance in favour of protecting liberty.

[48] This does not mean that allegations of forgery should be dismissed at the threshold. They must be examined with care in the course of investigation. But the long lapse of time weakens the claim of imminent necessity for custodial interrogation. It strengthens the argument that the investigation can proceed without curtailing liberty, provided conditions are imposed to secure attendance, ensure cooperation and maintain purity of investigation.

[49] In such circumstances, the cumulative effect of delay and settled public records requires the Court to lean in favour of granting protection. Liberty can be preserved, while the interests of investigation can be safeguarded by strict and

enforceable conditions. This balanced approach accords with the settled principles that guide the exercise of discretion in applications for anticipatory bail.

[50] The judgment of the Supreme Court in *Pratibha Manchanda* requires careful consideration. The Supreme Court therein emphasised that where allegations disclose clear and patent acts of forgery involving public documents and where the very foundation of title rests upon such fabricated instruments, the delay in lodging the FIR cannot by itself operate as a shield for the accused. The Court held that when collusive civil proceedings and clandestine transactions have taken place without the complainant's knowledge, the lapse of time pales into insignificance. In such cases, the gravity of the offence and the continuing impact of the forgery on public records outweigh the factor of delay.

[51] It is necessary to notice that the Supreme Court's observations were founded on peculiar facts. The forged general power of attorney, which formed the fulcrum of the fraudulent transaction, never surfaced before any authority or court for nearly two decades. It was never produced by the accused at any stage. The complainant had no means to discover its existence until late, and the chain of transactions had been engineered behind the complainant's back. In that background the Court refused anticipatory bail, holding that the delay was not fatal.

[52] Applying the principle to the present case, the Court must examine whether the factual foundation here stands on the same footing. The record before me shows that the instruments complained of are not hidden documents. The conveyance deed of 2008 and rectification deed of 2011 are registered instruments. They have been part of the public domain for years. The permission under Section 43 of the tenant law was granted after an inquiry by the Sub Divisional Officer. Civil suits were instituted by branches of the same family. Settlements were recorded. Confirming deeds were executed. These events show that the transactions were neither clandestine nor inaccessible to the complainant's predecessors.

[53] The ratio of *Pratibha Manchanda* does not lay down an absolute rule excluding delay as a relevant factor. It holds that delay must be assessed in the context of the complainant's knowledge and the nature of the alleged forgery. In cases where the documents are concealed, where the forgery is embedded in instruments never placed on public record, and where the complainant had no means to discover the fraud earlier, delay ceases to carry weight. However, where the documents are registered, acted upon and form part of public record for long years, the principle operates differently.

[54] In the present matter, the delay of twelve to fifteen years stands unexplained. The transactions were visible. The civil record demonstrates that the family invoked civil remedies and engaged with the documents. The complainant has not placed material to show that despite ordinary diligence the wrongdoing could not have been discovered earlier. In such circumstances the principle of *Pratibha Manchanda* does not divest the factor of delay of its significance. Instead, delay remains a relevant and weighty consideration in favour of the applicant.

[55] At the same time, the Supreme Court's emphasis on the gravity of forgery involving public documents is fully applicable. The allegations regarding mismatched 7/12 extracts, possible tampering with revenue entries, and substitution of village records, if ultimately established, would constitute serious criminality requiring thorough investigation. The Court must therefore ensure that while liberty is protected, investigation is not stifled.

[56] The correct approach, consistent with the binding law and mindful of factual distinctions, is to harmonise both principles. The delay and the long-standing public record weigh in favour of granting anticipatory bail. The seriousness of allegations and the need for effective investigation require the imposition of stringent conditions. This balanced method preserves the essence of the rule laid down in *Pratibha Manchanda* while applying it in a manner consistent with the facts at hand.

[57] Thus, the judgment strengthens the need for caution but does not mandate denial of anticipatory bail where the documents are long registered, publicly accessible and repeatedly acted upon. The present matter, upon its own facts, justifies protection with safeguards rather than incarceration at the threshold.

[58] The prosecution asserts that the investigation is still in progress and that certain documents, alleged to be forged, are yet to be traced. This submission requires careful consideration. The law does not treat custodial interrogation as a matter of routine. It is justified only when the investigating agency is able to show that such custody is necessary for eliciting information which cannot reasonably be secured by any other method.

[59] The Court must, therefore, scrutinise the record to see whether the need for custody has been demonstrated. The material placed before this Court shows that the applicant has appeared before the investigating officer on several occasions. He has produced documents in his possession. The prosecution does not dispute that purchasers and others connected with the transaction have already been interrogated. Some among them have been arrested and subsequently released on bail. This indicates that the investigation has progressed considerably without requiring the custodial interrogation of the applicant.

[60] The prosecution has not placed any material to show that a specific recovery hinges exclusively upon the custodial presence of the applicant. No document has been identified as lying undiscoverable unless the applicant is taken into custody. No circumstance has been pointed out which suggests that the applicant, if left at liberty subject to strict conditions, would obstruct the process of investigation. The Court must bear in mind that the object of custodial interrogation is not punitive. Its object is only to facilitate investigation when such custody is shown to be indispensable.

[61] The Court cannot deprive a person of liberty on the mere assertion that investigation is ongoing. Investigation often proceeds in stages. It may require verification of documents, examination of witnesses, or comparison of revenue entries.

Such tasks do not, by themselves, require the physical custody of the accused. The law demands a more concrete foundation before liberty is curtailed. In the absence of material demonstrating that the applicant's custodial interrogation is essential, it would not be just to deny him protection.

[62] A balanced approach must prevail. Liberty is not to be withdrawn mechanically. At the same time, the interests of investigation must be safeguarded. These interests can be secured by imposing conditions that ensure the applicant's availability to the investigating agency, restrain him from tampering with evidence, and prevent him from influencing witnesses. When such non-custodial measures can achieve the objective, the Court is not justified in placing the applicant in custody.

[63] The material placed before the Court shows that the applicant has a chequered history with the law. Several cases stand registered against him. Such antecedents cannot be brushed aside. They call for a careful and informed approach. At the same time, the mere volume of cases cannot be taken as a decisive factor for refusing anticipatory bail. The Court must undertake a qualitative assessment. It must examine the nature of the antecedents, the outcome of those proceedings and whether they indicate a pattern relevant to the present accusation.

[64] The record shows that in some matters the applicant has been acquitted. In several others, FIRs have been quashed by this Court. In a few cases, summary reports have been submitted. These outcomes show that antecedents, though numerous, do not by themselves establish that the applicant is inclined to evade the process of law or that he habitually obstructs investigation. The Court must distinguish between antecedents that are live and pressing, and those that have become spent or inconsequential with the passage of time or by reason of judicial determination.

[65] The true test is whether, in the facts of the present case, the antecedents create a real and immediate risk that the applicant will misuse liberty. The Court must consider whether he is in a position to influence the investigation, tamper with documentary evidence or suborn witnesses. The applicant has, according to the material placed on record, appeared before the investigating agency and produced documents. His cooperation, though not conclusive, is a relevant circumstance showing that he has not evaded the process.

[66] It is also not in dispute that the co accused purchasers, who are alleged to have been part of the chain of transactions, have already been released on bail. This fact reduces the likelihood that the applicant alone requires custodial interrogation for unravelling the transactions. When similarly placed co-accused have been granted liberty, the Court must consider whether parity and fairness warrant protection to the applicant as well.

[67] Yet, the antecedents cannot be ignored altogether. They call for vigilance. They warrant safeguards to ensure that liberty does not result in prejudice to the investigation. The balance can be maintained by imposing conditions which restrict the

applicant's movements, ensure his availability to the investigating agency, and prevent any attempt to interfere with the witnesses or documentary material.

[68] The Court, therefore, proceeds on a balanced understanding. Antecedents are a relevant factor, but they do not operate as an absolute bar. They require the Court to impose suitable protective conditions rather than to reject the application outright.

[69] Therefore, while recognising that the investigation must proceed to its logical end, the Court finds no material to hold that custodial interrogation of this applicant is indispensable. The ends of justice can be served by granting protection subject to stringent conditions, thereby preserving both personal liberty and the integrity of the investigation.

[70] Having considered the rival submissions I am satisfied that the applicant should be granted protection from arrest subject to conditions which adequately protect the investigation and the public interest.

(i) In the event of arrest of the applicant in connection with Crime Register No. 559 of 2025 registered at Thane Nagar Police Station for offences under Sections 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, 1860, the applicant shall be released on bail on their furnishing a personal bond in the sum of Rs.50,000 with two local sureties of Rs.50,000 to the satisfaction of the trial court concerned.

(ii) The applicant shall immediately furnish his true and permanent residential address and shall not change his residence without prior written permission of the trial court.

(iii) The applicant shall cooperate with the investigating agency. He shall make himself available for questioning as and when called. He shall produce all documents, records and originals in his possession which relate to the transactions in question and which have not yet been produced to the investigation.

(iv) The applicant shall not, directly or indirectly, induce, threaten or attempt to influence any witness, co-accused or person acquainted with the facts of the case. He shall not contact by any means the persons named in the FIR except through lawful process.

(v) The applicant shall not tamper with, destroy or dispose of any document or property connected with the investigation.

(vi) The applicant shall not leave the jurisdiction of the trial court including traveling abroad, without prior written permission of trial court.

(vii) The applicant shall report to the investigating officer once a week (Every Monday) until the completion of the investigation. If the investigating officer requires more frequent reporting the same shall be communicated with reasonable notice. Reporting shall be at the police station or at such place as the Investigating Officer may direct.

(viii) The applicant shall produce his passport, if any, before the investigating officer within seven days from today. The IO shall file an endorsement of receipt of the passport before the trial court.

[71] The investigating agency shall complete the investigation as expeditiously as possible.

[72] Nothing in this order shall be construed to affect the civil rights of the parties. The civil courts shall proceed untrammelled by this criminal proceeding and the parties shall remain at liberty to prosecute their civil remedies.

[73] The interim application stands disposed of in above terms

2026(1)MBAJ122

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: M M Nerlikar)

Criminal Appeal No. 22 of 2013 **dated 24/11/2025**

State of Maharashtra

Versus

Narayan S/o Shri Shivram Mataghare

BRIBE DEMAND PROOF

Prevention of Corruption Act, 1988 Sec. 13, Sec. - Bribe Demand Proof - Appeal challenged acquittal of accused charged for accepting illegal gratification during mutation entry process - Complainant alleged demand and acceptance during trap by Anti-Corruption Bureau - Trial Court found inconsistencies, contradictions, and lack of independent corroboration - Appellate Court examined evidence of demand and acceptance and considered double presumption of innocence in acquittal appeals - Found prosecution failed to establish clear demand forming foundation of offence - Procedural irregularities and doubtful witness conduct weakened case - View of trial court not perverse - Acquittal confirmed - Appeal Dismissed

Law Point: In corruption cases proof of demand and acceptance must be explicit and reliable; appellate interference in acquittal justified only when trial view perverse or unsupported by record.

Acts Referred:

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7

Counsel:

Bhagwan M Lonare, Jemini B Kasat

JUDGEMENT

M. M. Nerlikar, J.- [1] Heard.

[2] The appeal is directed against the judgment and order dated 07.12.2011 passed by the learned Special Judge Warora in Special (ACB) Case No. 11/2008, wherein the accused i.e. present respondent is acquitted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("PC Act").

[3] The prosecution case in brief appears to be:-

The complainant Shri Ashok Kathane intending to relinquish his rights in favour of his son qua his shop property vide a gift deed applied for mutation in favour of his son in the Office of the Taluka Inspector of Land Records, Chimur on 20.02.2003. At the relevant time, the present respondent was working as Head Quarter Assistant, demanded an amount of Rs.2000/- as illegal gratification for mutation entry but the complainant unable to pay the said amount and asked to reduce the amount to Rs.200/- . However, the accused/present respondent was persistent in his demand of Rs.2000/-. Again, on 09.07.2003, when the complainant went to respondent's office, same demand was made, to which the complainant agreed. As the complainant had no intention to give bribe to the present respondent, he visited the Office of Anti-Corruption Bureau, ('ACB') Chandrapur. The complainant made oral complaint in ACB Office which was reduced in writing by Shri Choudhari, Deputy Superintendent of Police, ACB on 21.07.2003. The ACB Officer called two persons to act as 'Panchas'. The complainant's complaint was read by the two 'panchas' and thereafter both the 'panchas' affixed their signatures on the said complaint. After preparing the Pre-Trap Panchnama, the raiding party proceeded to the Office of Taluka Inspector of Land Records. The present respondent demanded the bribe amount from the complainant which was handed over to the respondent. On giving the pre-fixed signal, the raiding party conducted the raid. The tainted notes were found on the person of the accused in his shirt pocket. Thereafter, a detailed Panchnama was prepared and the shirt of the present respondent was also seized. After examination, the shirt pocket of the present respondent as also the currency notes seized from him, turned violet in colour due to sodium carbonate solution being sprinkled on the tainted currency notes. Accordingly, Seizure Memos were duly recorded. After completing investigation by the Investigating Officer, charge-sheet came to be filed against the respondent. The learned Trial Court framed charge vide Exh-4. The same was read over and explained to the accused/respondent in vernacular language. The present respondent pleaded not guilty and claimed to be tried. The prosecution examined 5 witnesses to prove the guilt of the accused whereas, the respondent did not examine any witness in his defence.

The learned Trial Court upon hearing both the parties was pleased to acquit the respondent for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. Being aggrieved by the same, the State has preferred the present appeal.

[4] The learned APP submits that, in order to prove the guilt of the accused, the prosecution has examined as many as five witnesses. PW-1 is the complainant who has

lodged the complaint (Exh.18) with the ACB Office. PW-2 is Sanjay Bhaurao Wankhede Panch No.1 to the demand. PW-3 Vijay Ashokrao Kathane is son of the complainant. PW-4 Pandit Ramji Kanekar is the Sanctioning Authority and PW-5 Purushottam Ramrao Choudhary is the Investigating Officer who has registered the FIR (Exh.72) and also conducted the investigation. The learned APP submits that the prosecution has proved the case beyond reasonable doubt. All the witnesses supported the case of the prosecution and accordingly, the demand and acceptance was duly proved by the prosecution. He submits that in the cross-examination of the witnesses, nothing was brought on record, to draw an adverse inference. The testimonies of the witnesses were not shaken or shattered in the cross-examination. The trap was successful and the accused was caught red handed while demanding and accepting the illegal gratification. He submits that after considering the record, PW-4 who is the Sanctioning Authority has accorded the sanction. PW-1 and PW-2 deposed about the demand of Rs.2000/- by the respondent for effecting the mutation entry. The evidence of these two witnesses also show that the accused has accepted the bribe amount, therefore the Trial Court ought to have considered the evidence of PW-1 and PW-2 in its true perspective. However, the learned APP submits that the Trial Court has given much importance to the omissions and contradictions which do not go to the root of the matter and the Trial Court ought to have ignored those contradictions and omissions. He submits that, when the sanction was accorded by PW-4, it was specifically deposed that it was after going through the record and application of mind. The investigation was carried out in lawful manner and after getting the sanction order, the charge-sheet was filed and the case was proceeded. The accused was caught red handed and the tainted notes were recovered from the pocket of the accused. The Trial Court has committed gross error in acquitting the accused. Lastly, he prayed that the appeal be allowed and accused be convicted for the offence, for which he was charged.

[5] On the other hand, learned counsel for the respondent vehemently submits that the High Court is dealing with the appeal against acquittal. There is a double presumption of innocence after the acquittal and therefore, interference must be limited. He submits that the High Court is having full power to re-appreciate the evidence in appeal against acquittal, however interfering in the order of acquittal is only warranted where the Trial Court view is perverse, based on misinterpretation or ignorance of material evidence or results in miscarriage of justice. He submits that the prosecution has miserably failed to prove the case beyond reasonable doubt. The evidence of prosecution witness does not inspire confidence. On the contrary, it is based on hypothesis. There are several variances and contradictions in the testimonies of the prosecution witnesses. He submits that the evidence led by the prosecution is full of omissions and those omissions go to the root of the matter. The evidence of PW-1 and PW-2, if taken as it is, it cannot be said that the demand was duly proved. The evidence of prosecution witnesses have been shaken in crossexamination in order to bring on record the relevant omissions and falsify the case of the prosecution. The testimony of PW-1 cannot be believed as the conduct of PW-1 is not natural. PW-1 has suppressed many facts and those facts are brought on record by the defence in the

cross-examination of PW-1, therefore the evidence of PW-1 is required to be discarded. He further submits that the evidence of PW-2 who is Panch Witness is not believable and his presence at the spot itself is doubtful. Further, the sanction which was accorded by PW-4 is not in accordance with law and it is without application of mind. The draft was sent by the office of the ACB which is only signed by the Sanctioning Authority without going through the material and this fact was brought on record by the defence in the cross-examination. So far as PW-3 is concerned, his evidence is hearsay and his evidence would not be useful for the prosecution. The evidence of PW-5 Investigating Officer demonstrates only procedure which he has followed, even his evidence is full of contradictions and omissions, therefore cannot be relied. Lastly, he submits that if the evidence of PW-1 is perused, he stated that the demand was in the nature, "whether he brought the amount" is not sufficient as it does not constitute the demand in law, therefore the very basis in respect of demand is lacking. He submits that though it has come in the evidence of the Investigating Officer i.e. PW-5 that the statement of the respondent was recorded after the trap to which an explanation was given, however that statement does not find place in the charge-sheet and therefore, an adverse inference is required to be drawn. The conduct of PW-1 and PW-5 is unnatural for the reasons that without verification of the demand, the Investigating Officer accepted the version of the complainant. It is necessary to consider that, filing of the complaint by PW-1 (Exh.18), calling panchas from the office of the Conservator of Forest, Chandrapur, the panchas thereafter being readily present at the office of the ACB, the entire exercise done at the ACB office in respect of the procedure to be followed during the trap, going to the office at Chimur from Chandrapur, laying down the trap and so also registration of FIR after conducting the trap. All these stages have been done within one day which is not believable. He submits that PW-5 accepted the version of the complainant as gospel truth and arranged the trap. The conduct of PW-1 is unnatural for the reason that he readily brought 20 notes of denomination of Rs.100/- each, as if he knew that trap was going to be arranged on the very day and therefore, the conduct is unnatural and with malafide intention. So far as the earlier episode of demand is concerned, there is no specific date and time and same cannot be considered as the defence was successful in bringing omission on record to that effect in cross-examination and further that the omission was proved by PW-5 Investigating Officer, therefore, there is no connecting circumstances to the alleged incident of initial demand and acceptance dated 21.07.2003, therefore lastly he submits that the Trial Court after appreciating the entire evidence, acquitted the present respondent. He relies on the following judgments:-

- (i) P. Somaraju Vs. State of Andhra Pradesh, 2025 SCCOnlineSC 2291,
- (ii) State of Maharashtra Vs. Baliram, 2024 SCCOnlineBom 1019,
- (iii) Ramchandra and another Vs. State of Maharashtra, 2024 SCCOnlineBom 2286,
- (iv) **Mir Mustafa Ali Hasmi Vs. State of Andhra Pradesh**, 2024 10 SCC 489,

(v) Shashidhar Shivram Shinde Vs. State of Maharashtra, 2018 SCCOnLineBom 968,

(vi) **Dattatraya S/o. Rajaram Thaokar Vs. The State of Maharashtra**, 2017 AllMR(Cri) 4184,

(vii) **Subhash s/o. Narayanraoji Rathod Vs. State of Maharashtra**, 2017 AllMR(Cri) 4144,

(viii) **Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra**, 2004 AllMR(Cri) 1341,

(ix) **Mukhtiar Singh (since deceased) thr. His Legal Representative Vs. State of Punjab**, 2017 8 SCC 136.

[6] While dealing with the appeal against acquittal, the Supreme Court in the case of P. Somaraju (Supra) has laid down certain parameters which read as under:

"11. Before proceeding, it would be appropriate to recapitulate the well-settled principles governing interference with an order of acquittal by an Appellate Court, which were also discussed by the High Court in the impugned judgment. At the outset, we rely upon the seminal case of Chandrappa & Ors. vs. State of Karnataka,⁴ wherein this Court had laid down the five-point canonical test as follows:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." 4 (2007) 4 SCC 415.

12. To summarize, an Appellate Court undoubtedly has full power to review and reappraise evidence in an appeal against acquittal under Sections 378 and 386 of the Code of Criminal Procedure, 1973. However, due to the reinforced or 'double' presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgements of this Court has more firmly entrenched this position, including, inter alia, Mallappa & Ors. vs. State of Karnataka, Ballu @ Balram @ Balmukund & Anr. vs. The State of Madhya Pradesh, Babu Sahebagouda Rudragoudar and Ors. vs. State of Karnataka, and Constable 907 Surendra Singh & Anr. vs. State of Uttarakhand."

[7] In order to prove the case of the prosecution, the prosecution has examined as many as five witnesses. PW-1 is the complainant examined at Exh.17; PW-2 Sanjay Wankhede who was present at the time of demand and acting as Panch was examined at Exh.31, PW-3 Vijay Kathane who is the son of complainant was examined at Exh.54, PW-4 Pandit Kanekar who is the Sanctioning Authority was examined at Exh.55 and PW-5 Purshottam Choudhary who is the Investigating Officer was examined at Exh.66. Upon perusal of the evidence of PW-1, he has deposed that in order to mutate the name of his son Vijay in respect of his property i.e. shop, he approached the accused who was serving in the office of the Land Record at Chimur as he looked after the said work. When he met with the accused, accused told him that if he wanted to mutate the name of his son, he will have to sell that shop to the complainant's son and for that he will be required to spend Rs.10,000/- to Rs.15,000/-, but instead of that PW-1 should pay Rs.2000/- to the accused so that he will effect the entry in the name of his son. It was informed by PW-1 that it was not possible for him to spend Rs.2000/-, instead he will pay Rs.200/-. However, the accused was persistent in his demand of Rs.2000/-. Thereafter, he visited the accused several times, but every-time, the accused was persistent in his demand of Rs.2000/- The accused had said that he may come anytime with Rs.2000/- and he will do his work. Subsequently, he went to the ACB Office and lodged complaint against the accused. After recording the complaint (Exh.18), PW-1 produced an amount of Rs.2000/- in the ACB Office. He further deposed that two panchas were called and they were explained about the procedure which was to be followed by the ACB Office. Thereafter, PW-2 who is panch witness went along with PW-1 and after reaching the office of the accused, the

accused said that his work will not be done on that day and it will be done on Monday. However, PW-1 replied that on Monday, he is not available in town and so his work be done on that day itself. Accordingly, the accused agreed and asked him whether he has brought the amount. PW-1 replied and said that he has brought an amount of Rs.2000/- . Thereafter, the accused took out some papers and obtained signature of PW-1. Accused said that his work was ready and accordingly PW-1 took out the amount by right hand from the pocket of his shirt and handed over to the accused, who accepted that amount. Accused counted the amount and kept it in the pocket of his shirt. He further deposed that when the amount was paid to the accused, he gave signal by removing his spectacles and when the accused said to PW-1 to come to the office of Mr. Nannaware at that time, the accused was caught by the raiding party. The subsequent procedure was thereafter followed.

[8] Pw-3 who is son of PW-1 deposed that as his father (PW-1) intended to transfer the building in his name and accordingly, PW-1 executed gift deed in favour of PW-3 and for the mutation purpose, PW-3 along with PW-1 went to the Taluka Land Record Office. Accordingly, the application was submitted by PW-3. He further deposed that the accused had perused all the documents and told that gift-deed is not proper and sale-deed will have to be executed and for that purpose, he will be required to spend Rs.10,000/- to Rs.15,000/-. He further deposed that they will also be required to pay stamp duty. The accused told his father that if he does not want to spend that much amount, then they will have to pay Rs.2000/- to him and he will do the work. However, his father (PW-1) told him that he will pay Rs.200/- for tea, but the accused refused to do the work unless Rs.2000/- was paid to him. The rest part of his deposition is hearsay.

[9] Another witness is PW-2 who is a panch witness who accompanied along with PW-1 to the office of the accused. PW2 deposed that he was serving in the office of Conservator of Forest, Chandrapu and another panch Diwakar Kemekar was working as a Forest Guard in his office. He further deposed that he knows accused and complainant. The incident occurred on 21.07.2003, when he was called in the ACB Office along with another panch Diwakar Kemekar. They were asked about willingness to act as panch. Accordingly, both gave consent to act as panch. At the relevant time, the complainant was present. Complaint which was lodged by the complainant, was given to the panchas for reading. In the complaint, demand of Rs.2000/- was mentioned for effecting mutation entry of the field in the land record by the accused. He further deposed that an amount of Rs.2000/- was brought by PW-1. These were 20 notes of denomination of Rs.100/- each. Numbers of currency notes were noted. Then the demonstration of the entire process was given. Thereafter, it was informed that they had to go to Chimur and accordingly PW-1, PW-2 and another panch witness went to Chimur by Jeep to the office of accused . Accused was present in the office. The complainant asked the accused about his work. Accused told that his work is not done yet and accordingly informed that he has no time and to come on

Monday. PW-1 informed that he is not available on Monday and he is going to other village. Therefore, his work should be done today itself. Accordingly, accused asked him whether he has brought the amount as agreed. Complainant told him that he has brought the amount of Rs.2000/-. Accordingly, the PW-1 handed over amount to the accused. Accused accepted it by hand and kept in his shirt pocket. Then accused gave two forms to the complainant and asked him to put date as 04.06.2003. PW-1 signed those forms. Those were kept by the accused. Thereafter along with the pad of papers, accused went inside the cabin of officer Nannaware. Thereafter, PW-2 gave signal to another panch Kemekar who was standing near the gate of the said office, then that panch gave signal to the raiding party. Thereafter, members of the raiding party and panch Kemekar came in the office of the accused and asked PW-2 where is accused. Accordingly, PW-2 informed that accused has accepted the amount and he is in cabin. Thereafter, Dy.S.P. Choudhary went inside the cabin of officer Nannaware along with Police Constable Dongre and Sayankal and they caught hold of the accused. Accused was frightened and asked the Police Officer of their identity. Accordingly, Dy.S.P. Choudhary introduced himself and other members of staff. He further deposed that Dy.S.P. Choudhary asked him where the accused has kept the amount. Accordingly, he informed that the amount is in his shirt pocket.

Thereafter, one person took out the notes from the shirt pocket of the accused and he does not remember the name of the person who has taken out the amount. PW-2 has further deposed about the procedure which was carried after accused was caught red handed.

[10] Now, so far as cross-examination of all these three witnesses are concerned, PW-1 has admitted that unless some amount is paid to Mr. Nannaware, his work will not be done. It was also stated to him that Mr. Nannaware will not directly accept the bribe. He further admits that the accused was caught by raiding party on getting signal just on entering the cabin of Mr. Nannaware. It was brought on record by the defence in the cross-examination that during investigation, the Investigating Officer had recorded PW-1's statement. However, it is not stated in the statement that he repeatedly visited the office of Land Records and met with accused about 5 to 6 times and each time the accused asked him to pay Rs.2000/-. It has also come in the cross-examination that the accused said to him that he can bring the amount of Rs. 2000/- at any time and whenever the amount will be brought, he will do his work. He further deposed that he cannot assigned any reason as to why these facts do not find place in his statement though he has stated. Further, in the cross-examination of PW-2, he admits that he went to office of the ACB at about 11 to 11.30 a.m. and after one and half hours, he along with other raiding party, proceeded for the raid. Categorically, he admits that before proceeding for raid, he had not given any signature. He further admits that after the amount was paid on demand, he was not directed by Dy.S.P. Choudhary to give signal. It was told to PW1 to give the signal. He further admitted that he has stated to the Police that he gave signal to Kemekar who was standing near

the gate of the office who then gave the signal to the raiding party, however he did not assign any reason why this fact did not find place in his statement. He admits that he cannot assign any reason why the same has not come in the statement that he had stated that accused had kept the amount in his shirt pocket. He further admits that after accused was caught, he was interrogated and the statement of accused was also recorded in his presence.

[11] Upon perusal of the entire evidence of these three witnesses, it appears that accused has asked PW-1 as to whether he had brought the amount. Whether the aforesaid question amount to demand is the question before this Court. As argued by the learned counsel for respondent that it does not amount to demand as held in the case of Mukhtiar Singh (Supra), of which para 19 and 24 read as under:-

"19. Inspector Satpal (PW 2), who was the shadow witness, after reiterating the statement of the complainant with regard to the pre-trap proceedings, stated that he along with the complainant on that day met the original accused and followed to his quarter in the building of the police station whereafter the original accused enquired of the complainant as to whether he had brought the money, on which, the latter handed over three currency notes denomination of Rs 500 and five currency notes of Rs 100 each to him and that he kept the same in a cardboard box lying near him. The witness stated that he then gave a signal to the other members of the raiding party including the DSP (Vigilance) who entered the room and undertook the steps pertaining to recovery and seizure as narrated by the complainant. Further, in the case of Dattatraya S/o. Rajaram Thakkar (supra) and Mir Mustafa Ali Hasmi (supra).
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24. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs 3000 which had been paid or of Rs 2000 as made on the day of trap operation is wholly inadequate to comply with the prerequisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs 3000 at the first instance is alleged to have been paid i.e. Santosh Singh Lambardar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs 3000 as well as the demand of Rs 2000 has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of the complainant and the Inspector Satpal, the shadow witness in isolation that the original

accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act."

[12] After perusal of above judgment, it could be said that the question which was posed by the accused cannot be said to be demand in the eye of law. As the Supreme Court has specifically held that, inquiry as to whether money had been brought or not, can by no means constitute demand as recognized in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the PC Act. Therefore, in order to attract Section 7 or 13 of the PC Act, there should be other cogent evidence, other than the accused asking whether money has been brought or not.

[13] After perusal of the evidence of PW-1, PW-2 and PW-3, there are many omissions which have come in the evidence of PW-1 like the statement regarding going to Land Record Office 5 to 6 times and the demand of Rs.2000/- being made by the accused, that entire part was brought on record as omission which was proved by the Investigating Officer i.e. PW-5 in paragraph No. 20 which is a material omission. The same was also brought on record even in the cross-examination of PW-2. The said omission was brought from the mouth of PW-1 and was proved by PW-5 Investigating Officer. This omission is a material omission which goes to the root of the matter and falsify the version of PW-1. If this material omission is brought on record, then there is no proof of initial demand neither there is date and time is forthcoming and therefore, further demand dated 21.07.2003 in the nature of whether he brought the amount is not sufficient to comply with the prerequisites to constitute the ingredients of the offence of which accused is charged. Therefore, from the evidence, it is crystal clear that the prosecution has utterly failed to prove the initial demand and further on 21.07.2003, merely inquiring "whether the amount is brought", is not sufficient to constitute offence under Section 7 or 13 of the PC Act. It is settled position of law that if the prosecution fails to prove the demand then mere acceptance is of no use.

[14] From the entire evidence of these three witnesses, there are various contradictions and omission which destroys the case of the prosecution. On one hand, PW-1 deposed that he has given the signal to the raiding party, however on the other hand, PW-2 deposed that he has given signal to Kemekar who is another panch witness. However, it has come in the evidence of PW-5 that PW-1 has given the signal to the raiding party. Further, it has come in the evidence of PW-2 that one person took out the notes from the shirt pocket of the accused, however he does not remember the name of that person who has taken out the amount. However, PW-5 has stated that panch No.2 - Kemekar has taken out those notes. This is also a major contradiction which was brought on record. If at all PW2 was accompanying with another panch

Kemekar, then certainly he would have taken the name of Kemekar, however as PW-2 does not remember the name who has taken out the amount creates doubt about his presence and therefore, his testimony cannot be believed. It is further to be noted that from the deposition of PW-3, he accompanied his father to the office of the accused when initial demand was made, however same does not find place in the evidence of PW-1. Therefore, there are several contradictions and variances in the testimonies of these witnesses. The evidence of these witnesses cannot be believed and the prosecution has utterly failed to prove the demand. The presence of PW-1, PW-2 and PW-3 at the place of incident itself is doubtful in view of above discussion and therefore, this evidence will have to be discarded.

[15] In the evidence of PW-4 who is the Sanctioning Authority, it is deposed that the department of ACB has sent the documents to him for according sanction. Accordingly, he verified all the documents sent to him along with proposal of sanction order. He further deposed that sanction bears his signature at Exh. 56. He is empowered to appoint and remove the accused. In the cross-examination, he admits that he had also received proforma of sanction order. He admits that before according sanction, he had not verified the service book of the accused. The learned counsel for the respondent submitted that the sanction is not valid as PW-4 without application of mind had signed sanction order which was already received by him. To buttress his submission, he relied on the case of State of Maharashtra Vs. Baliram (supra). This Court while dealing with the sanction order, has observed as under:-

"Perusal of the sanction order reveals that First seven paragraphs deal with allegation levelled against accused. In second last paragraph, only it is mentioned that upon reading papers of investigation and evaluating evidence carefully, he is satisfied that there is an adequate evidence against the accused and accorded sanction."

Further, the learned counsel for the appellant relied on another judgment of Ramchandra and another (Supra) wherein in para 21 it is observed as under:-

"21. Here, in the present case, the sanction is not only challenged on the ground of Incompetency of Sanctioning Authority PW4 Dilip Swami but also on the ground of nonapplication of mind. Perusal of the sanction order shows that the Sanctioning Authority has not clarified that on what basis he came to conclusion that the sanction is to be accorded. As observed earlier, the sanction of the Sanctioning Authority should be after application of mind. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied his mind to all relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law. Perusal of the evidence of Sanctioning Authority PW4 Dilip Swami and the sanction

order nowhere reflects material that on which basis he came to conclusion that the sanction is to be accorded. Thus, the sanction granted is not a valid sanction."

[16] Keeping in mind the observations of this Court, I perused the sanction order (Exh.56). It is apparently clear that even in this case the first seven paragraphs deal with the allegations levelled against the accused. In another paragraph it is stated that upon reading papers of the investigation and evaluating evidence carefully, he is satisfied that there is sufficient evidence against accused and in the last paragraph sanction has been accorded.

[17] From the evidence and order of sanction at Exh.56, it is crystal clear that the Sanctioning Authority has not applied his mind and only signed the sanction order which was provided by the ACB Department along with the proposal which is further corroborated by the admission of PW-4 that he has received proforma of sanction order. If such cryptic orders are passed, according sanction, it would frustrate the very object of inserting the provisions for getting sanction for prosecuting government servant. The purpose of this provisions is to safeguard frivolous complaint/frivolous allegations against public servant and if the Sanctioning Authority fails to apply mind to the fact and material placed before it, under such circumstances, that sanction is not valid sanction accorded, therefore on this ground also the prosecution has failed.

[18] There is one another glaring factor in this case, that though the statement of the accused was recorded immediately after he was caught red handed, that statement was not placed on record by the prosecution and therefore, whatever explanation given by the accused has not come on record. It has come in the evidence of PW-5 Investigating Officer that at the time of incident, the statement was given by the accused. Admittedly, the said statement does not form part of the charge-sheet. Therefore, an adverse inference ought to be drawn that the said statement was fatal to the prosecution. This Court in case of Shashidhar Shivram Shinde (supra) observed in para 12 which read as under:-

"12. As per the panchanama no. 2, explanation of accused was taken by Police Inspector Shri Idole. But that explanation not filed with the chargesheet. In the case of Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra (cited supra), this Court has observed as under: However, there is one more important circumstance and i.e. the statement to be found in the post trap panchnama to the effect that immediately after the trap was sprung, both the accused were asked by P.I. Dhok and they gave their version regarding acceptance of money. It is the express prosecution case which can be found in the panchnama that the version given by accused was reduced to writing and signed by the panchas as well as P.I. Dhok. The contents of what was mentioned in these two writings was not found in the panchnama as those were separate documents. However, for reasons best known to the prosecution, these documents have not been brought before the Court in the

trial. The panchas examined as well as P.W. 7 Dhok but do not utter a single word about this first version given by the two accused in writing immediately after the trap was sprank. This circumstances of suppressing the first version as given by two accused, according to him, is a very important circumstance which raises a shadow of doubt about the veracity of the prosecution case. The duty of the prosecution is to bring the entire truth as found before the Court.

It appears to me that these two vital documents have been kept back from the trial. In my view, in such circumstances, these writings were evidence which could be produced and which were in the hands of the Investigating Agency and which could have been produced as evidence in the Court but was not produced. By virtue of Section 114 of the Indian Evidence Act, the Court would be entitled to presume that had these documents been produced, they would not have favoured the prosecution which had withheld these documents. Useful reference can be made to illustration (g) of Section 114 of the Indian Evidence Act, in this regard."

[19] Therefore, as observed earlier the explanation of the accused, taken by Dy.S.P. Choudhary, that explanation/statement was not filed along with the chargesheet for the reasons best known to the prosecution and therefore non-production of explanation given by the accused creates doubt about the prosecution story.

[20] Considering the above discussion, it is crystal clear that the story of the prosecution is not believable. The evidence of PW-1, PW2 and PW3 is full of contradictions, omissions and there are variances in their testimonies, therefore the evidence cannot be believed. It is further necessary to mention that demand is not proved and therefore, mere acceptance is not sufficient to come within the purview of Sections 7 and 13 of the PC Act. Not only that, even the surrounding circumstances do not support the case of the prosecution. Further, the sanction order was accorded without application of mind. So also, the statement of the accused recorded by the Dy.S.P. Choudhary is not placed on record and therefore, it creates doubt about the story of the prosecution. For all these reasons and keeping in mind, the parameters laid down by the Apex Court in the case of P. Somaraju (supra), I am not inclined to interfere in the judgment of acquittal dated 07.12.2011 passed by the learned Special Judge, Warora in Special (ACB) Case No.11/2008. The Trial Court has not committed any error in acquitting the respondent. After appreciating the entire evidence in its true perspective, the following order is passed.

ORDER

(i) Appeal is dismissed
